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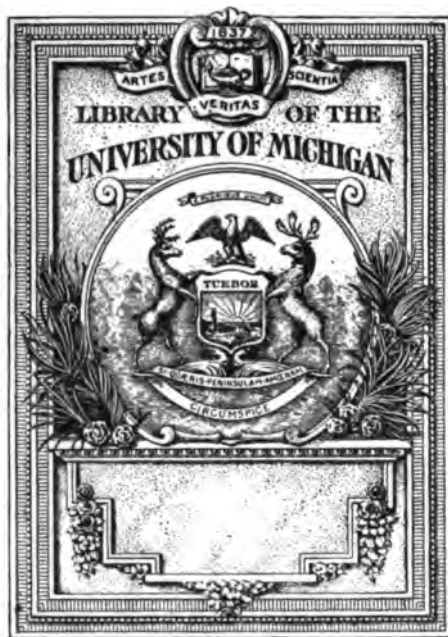
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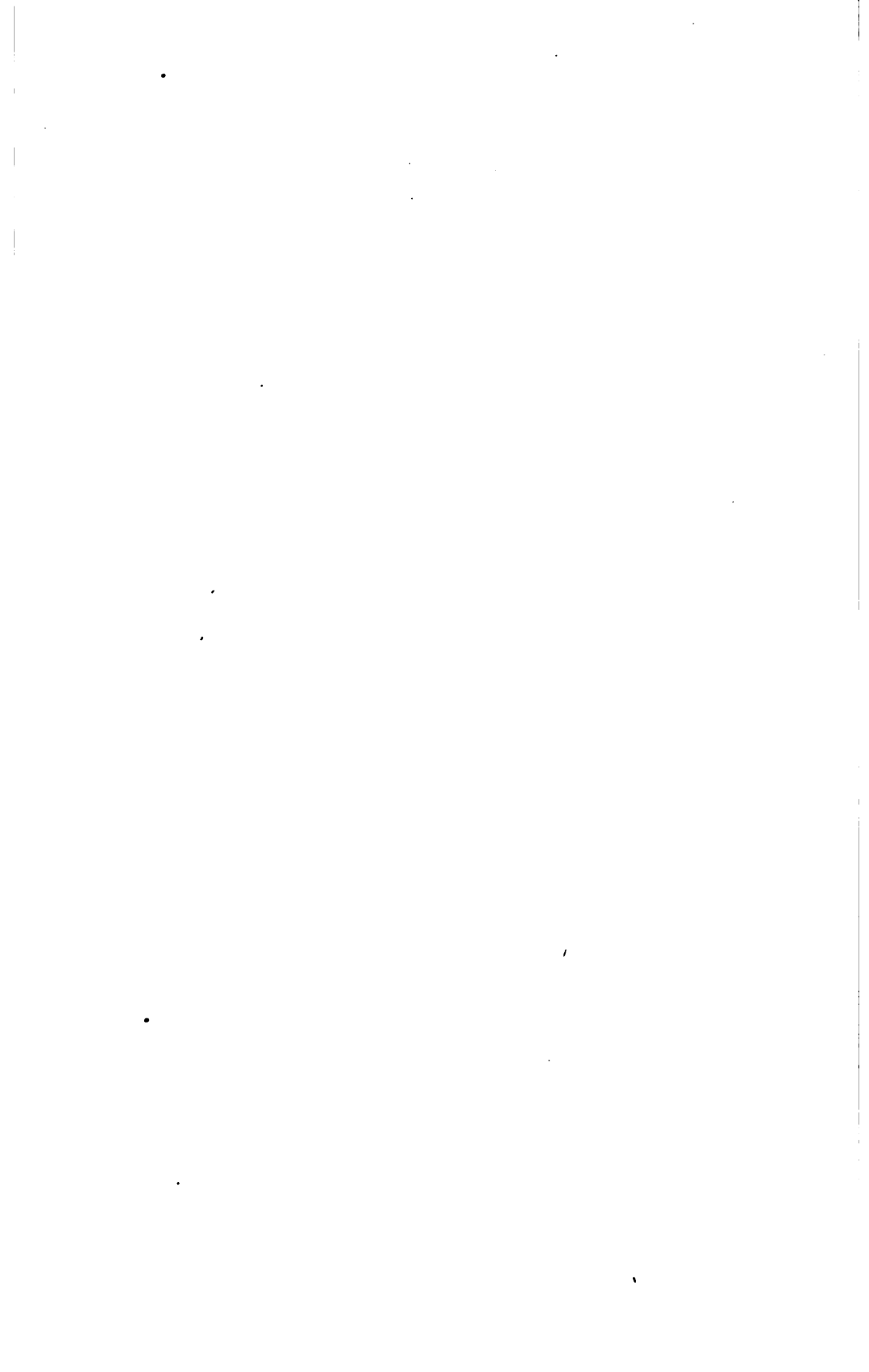
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# **FEDERAL TRADE COMMISSION DECISIONS**



## **FINDINGS, ORDERS AND CONFERENCE RULINGS OF THE FEDERAL TRADE COMMISSION**

**MARCH 16, 1915, TO JUNE 30, 1919**

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**PUBLISHED BY THE COMMISSION**

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## **VOLUME I**



**WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1920**



## **PREFACE.**

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This, the first volume of the Commission's reports of its decisions in proceedings to correct violations of the statutes which it is charged with the duty of enforcing, covers the period from its organization, March 16, 1915, to and including June 30, 1919. It is hoped that this publication may aid in furnishing that "definite guidance and information" which the President and the Congress had in view in the establishment of the Federal Trade Commission, by the gradual working out of a code of business law.

This volume has been prepared and edited by Messrs. Adrien F. Busick and Millard F. Hudson, of the Commission's staff.



## MEMBERS OF THE FEDERAL TRADE COMMISSION.

---

JOHN FRANKLIN FORT, *Chairman*,  
Took oath of office March 20, 1917.  
VICTOR MURDOCK, *Vice Chairman*,  
Took oath of office September 4, 1917.  
HUSTON THOMPSON,  
Took oath of office January 17, 1919.  
WILLIAM B. COLVER,  
Took oath of office March 21, 1917.  
J. P. YODER, *Secretary*,  
Took oath of office April 1, 1919.

---

Five other commissioners have served since the Commission was established.

JOSEPH E. DAVIES,  
Took oath of office March 16, 1915; resigned March 18, 1918.  
WILLIAM J. HARRIS,  
Took oath of office March 16, 1915; resigned May 31, 1918.  
EDWARD N. HUNLEY,  
Took oath of office March 16, 1915; resigned January 31, 1917.  
WILL H. PARRY,  
Took oath of office March 16, 1915; died April 21, 1917.  
GEORGE RUBLEE,  
Took oath of office March 16, 1915; service terminated September 8, 1916.  
LEONIDAS L. BRACKEN,  
Took oath of office as Secretary October 20, 1915; resigned March 31, 1919.

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**FEDERAL TRADE COMMISSION v. CLARENCE N.  
YAGLE, LEROY H. MACAULEY, AND MURDOCK  
H. SMITH, TRADING AS CIRCLE CILK CO.**

**COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 5 OF THE ACT OF CONGRESS, APPROVED SEPTEMBER  
26, 1914.**

**Docket No. 3.—August 19, 1916.**

**SYLLABUS.**

Where a partnership engaged in the manufacture and sale of a floss or thread containing no genuine silk, used in labeling, advertising, and sale thereof the word "Cilk," with the result that purchasers were misled into the belief that such goods were made entirely of silk, and that competitors making genuine silk goods were injured, although no intention on the part of the manufacturer to cause deception was shown:

*Held*, That such labeling, advertising, and sales, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

**COMPLAINT.**

The Federal Trade Commission, having reason to believe that The Circle Cilk Co. has been and is using unfair methods of competition in commerce, in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect as follows:

1. That the said Circle Cilk Co., hereinafter called the respondent, is a corporation organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business located at 2734 North Fifth Street, Philadelphia, in the State of Pennsylvania, and is engaged in commerce among the several States.

2. That the said respondent has from time to time manufactured, sold, and delivered, and is still manufacturing,

selling, and disposing of, in interstate commerce, large quantities of cotton thread under a trade name, stamp, or trademark as follows:

---

Circle Silk  
Phila. Phila.  
Pa. No. 5. Pa.  
Embroidery Floss

---

27.3 yards

3. That the word silk, when applied to thread or textile goods, both in the technical and popular usage, has a precise and exact meaning, and is only accurately and properly used in identifying and describing materials derived from the cocoon of the silkworm, and that the said thread which has been and is being sold and disposed of by respondent is neither composed of genuine silk nor contains any portion of genuine silk.

4. That said thread is sold and disposed of by respondent in commerce as aforesaid to many customers in various States in direct competition with the goods of manufacturers and dealers in such commerce of genuine silk thread.

5. That the said trade stamp "Circle Silk Embroidery Floss" has been and is being used on said cotton thread with the intent and purpose of confusing, deceiving, and misleading the public into the belief that said thread is composed wholly of genuine silk or contains some portion of genuine silk, and the natural result of the use of said trade stamp or brand is to confuse, mislead, and deceive purchasers thereof and the public into the belief that said cotton thread is genuine silk thread or contains some portion of genuine silk or into buying said thread as genuine silk thread or containing some portion of silk, and the use of said trade stamp or brand does deceive purchasers thereof and the public into the belief that said cotton thread is genuine silk thread or contains some portion of silk.

6. That because of the aforesaid method of competition, to wit, the use of the aforesaid false trade stamp or brand, and the resulting deception of purchasers and consumers, manufacturers, or others engaged in the manufacture and sale, or the sale, of genuine silk thread in interstate commerce have been and are injured in their trade and business.

**REPORT, FINDINGS AS TO THE FACTS, AND ORDER.**

At a meeting of the Commission on this date, it appearing that there is on file in the above cause a stipulation, duly signed by counsel for the Commission and counsel for respondents including proposed findings and consent order for the final disposition of this case, the following proceedings were had:

On motion of Commissioner Davies the Commission approved and made the following findings and order, and directed that the same be entered of record in said cause:

**FINDINGS AS TO THE FACTS.**

Upon the complaint and answer, as amended by stipulation, the Commission finds in this case as follows:

1. That the respondents manufacture and sell in interstate commerce a floss or thread made of mercerized sea island cotton under the label "Circle Cilk Embroidery Floss," which floss or thread contains no portion of silk made from the cocoon of the silkworm.

2. The word "silk," when applied to thread or textile goods, both in technical and popular usage, has precise and exact meaning and is only accurately and properly used in identifying and describing materials derived from the cocoon of the silkworm.

3. Respondents have extensively used the word "cilk" in labeling, advertising, and disposing of their product in interstate commerce as complained of, with the result that such misbranding is likely to deceive some persons in the trade, and has deceived some of the consuming public into believing they are buying and receiving a product made of silk when in fact they are not.

4. That whenever such confusion and deception occurs there also results a damage to the trade and manufacturers who deal in silk products.

5. The Commission also finds that such resulting confusion, deception, and injury has resulted without any malicious intent on the part of the respondents. Wherefore,



## ORDER TO CEASE AND DESIST.

*It is ordered,* That the respondents Clarence N. Yagle, Leroy H. Macaulay, and Murdock H. Smith, trading as the Circle Cilk Co., shall forthwith cease and desist, either personally or through their agents and employees, from using the word "cilk" in reference to any of their products other than silk, either in the sale thereof or on or in connection with any of their trade-marks, trade names, labels, or advertising matter.

## FEDERAL TRADE COMMISSION

v.

## A. THEO. ABBOTT &amp; CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 2.—October 20, 1916.

## SYLLABUS.

Where the manufacturer of a textile product containing no genuine silk, used in the labeling, advertising, and sale thereof, such descriptive words as "silk" or "silks," "Kapock Silk" or "Kapock Silks," "Sun-fast Silk" and "Tub-fast Silk," with the result that purchasers were misled into the belief that such goods were made entirely of silk, and that competitors making genuine silk goods were injured, although no intention on the part of the manufacturer to cause deception was shown:

*Held,* That such labeling, advertising, and sales, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

## COMPLAINT.

The Federal Trade Commission, having reason to believe that A. Theo. Abbott & Co. have been and are using unfair methods of competition in commerce, in violation of the provisions of section 5 of the act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect as follows:

1. That the said A. Theo. Abbott & Co., hereinafter called the respondent, is a corporation, having its principal office and place of business in the city of Philadelphia, in the State of Pennsylvania, and engaged in commerce among the several States in the manufacture, advertisement, sale, and distribution of textile goods used primarily for tapestries and interior decorations.

2. That the said respondent has from time to time manufactured, advertised, sold, and distributed, and still is manufacturing, advertising, selling, and distributing, in interstate commerce, large quantities of a cotton product or material under a trade-mark or trade name substantially as follows:

Guaranteed  
KAPOCK  
Sun Fast Silks  
Reg. Ser. No. 72567  
Is not a Worm Silk

The words "Is not a worm silk" are printed in minute inconspicuous letters.

3. That said trade-mark or trade name is printed on tickets attached to said merchandise and there is printed matter on the back of said tickets in the following words:

THE WHITE BASTING THREAD  
on the reverse side of Kapock Silk is a  
patented trade-mark for your protection  
(which can be easily removed without  
damage to goods), and is your  
GUARANTEE  
that we'll refund your money or replace  
the goods, if Kapock Silks fade in either  
sun or water. Kapock Silks are sun-fast  
and tub-fast.

A. THEO. ABBOTT & CO.

Philadelphia, Pa.

4. That the word "silk," when applied to textile goods, both in the technical and popular usage, has a precise and exact meaning, and is only accurately and properly used in identifying and describing materials derived from the cocoon of the silk worm, and that the said product and material which is being so manufactured, advertised, sold, and dis-

tributed by respondent is neither composed of genuine silk nor contains any portion of genuine silk.

5. That the said product is sold and distributed by respondent in commerce as aforesaid to many customers in various States in direct competition with the goods of manufacturers and dealers in such commerce of genuine silk.

6. That the aforesaid trade-mark or trade name has been and is being used on and in reference to said cotton product or material with the intent and purpose of confusing, deceiving, and misleading the public into the belief that the said product or material is composed wholly of genuine silk or contains some portion of genuine silk, and the natural result of the use of said trade-mark or trade name is to confuse, mislead, or deceive purchasers thereof and the public into the belief that the said cotton product or material is genuine silk product or material, or contains some portion of genuine silk, or into buying said product or material as genuine silk material, or as containing some portion of silk, and the use of said brand or trade name does deceive purchasers thereof and the public into the belief that the said cotton product or material is genuine silk or contains some portion of silk.

7. That because of the aforesaid method of competition, to wit, the use of the aforesaid trade-mark or trade name and the resulting deception of purchasers and consumers, manufacturers or others engaged in the manufacture and sale or the sale of genuine silk material in interstate commerce have been or are injured in their trade and business.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

At a meeting of the Commission on this date, it appearing that there is on file in the above cause a stipulation duly signed by counsel for the Commission and counsel for respondents, including proposed findings and consent order for the final disposition of this case, the following proceedings were had:

On motion of Commissioner Davies the Commission approved and made the following findings and order, and directed that the same be entered of record in said cause.

## FINDINGS AS TO THE FACTS.

Upon the complaint and answer, as amended by stipulation in this case, the Commission finds as follows:

1. That the respondents, A. Theo Abbott & Co., a copartnership composed of A. Theo Abbott, Alvina Abbott, Eugene A. Abbott, and John Laycock, with their principal place of business at Philadelphia, Pa., manufacture under a valued secret process and sell extensively in interstate commerce throughout the United States a textile product, under the registered name "Kapock"; that in connection with the labeling, advertising, and selling said product, respondents have used various descriptive words, among them the following: "Silk" or "Silks," "Kapock Silk" or "Kapock Silks," "Sun-fast Silk," "Tub-fast Silk," usually with the legend "Not a worm silk."

2. That said "Kapock" fabric or product, as now manufactured, contains no portion of silk made from the cocoon of the silk worm.

3. That whenever used without any qualifying word, the word "silk," when applied to textile goods, both in technical and popular usage, has usually been considered to have a precise and exact meaning, and is accurately and properly used only in identifying or describing materials derived or made up entirely from the cocoon of the silkworm. That the terms "worm silk," "cocoon silk," or "genuine silk" have been and are being used as synonymous with "silk."

4. That a result of the use by respondents in connection with their labeling and advertising of their "Kapock" fabrics as now manufactured of the word "silk" or "silks" has been the improper use thereof by some retailers to deceive some purchasers into the belief that they were buying and receiving goods made entirely of silk, when in fact they were not.

5. That such confusion and deception may have resulted in damage to the trade and to manufacturers who deal in silk products—that is, products made entirely of silk derived from the cocoon of the silkworm.

6. The Commission also finds that whatever possible confusion, deception, and injury resulted were without any intent or personal knowledge on the part of the respondents;

and the Commission further finds that respondents have already taken substantial steps to correct every possible confusion and deception; and the Commission finds that by the stipulation herein filed, respondents are ready and willing to remove all causes of possible confusion and deception.

Wherefore,

ORDER TO CEASE AND DESIST.

*It is ordered* that the respondent, A. Theo. Abbott, Alvina Abbott, Eugene A. Abbott, and John Laycock, being a copartnership trading under the name of A. Theo. Abbott & Co., acting either as a partnership or personally, or through their agents and employees, shall forthwith cease using the word "silk" or "silks" in reference to their "Kapock" fabrics as now manufactured, either in the sale thereof, or on, or in connection with, any of their trade-marks, trade names, labels, or advertising matter referring thereto, except that they may continue to use the legend "Not a worm silk."

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FEDERAL TRADE COMMISSION

v.

A. B. DICK CO. OF NEW JERSEY, A. B. DICK CO.  
OF ILLINOIS, AND THE NEOSTYLE CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 3 OF THE ACT OF CONGRESS APPROVED OCTOBER 15,  
1914.

Docket No. 4.—May 25, 1917.

SYLLABUS.

Where corporations under common ownership engaged in the manufacture and sale of duplicating machines and supplies, and together controlling approximately 85 per cent of the duplicating machines, 88 per cent of the stencil paper, and 80 per cent of the stencil duplicating ink sold in the United States,

(a) made sales and contracts for sales of their patented stencil duplicating machines and stencil paper to users thereof on the condition, agreement, or understanding, by notice conspicuously displayed on such machines and paper, that the purchasers thereof should not use in connection therewith any stencil duplicating machines or supplies of competitors of such corporations;

- (b) made sales and contracts for sales of their stencil duplicating machines and stencil paper to dealers on the condition that such dealers would not sell any supplies for use on its machines except those made by it; and
  - (c) enforced such conditions, restrictions, or requirements, and insisted upon the observation of the same, with the effect that competition in the sale of duplicating machines and supplies had been and might be substantially lessened:
- Held*, That such sales and contracts of sale, under the circumstances set forth, constituted a violation of section 3 of the act of October 15, 1914.

### COMPLAINT.

The Federal Trade Commission having reason to believe that the A. B. Dick Co. of New Jersey, the A. B. Dick Co. of Illinois, and the Neostyle Co., hereinafter referred to as respondents, have violated and are violating the provisions of section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect as follows:

1. The A. B. Dick Co., of New Jersey, is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and having an office for the transaction of business at Chicago, Ill.; the A. B. Dick Co., of Illinois, is a corporation organized and existing under and by virtue of the laws of the State of Illinois and having a principal office and place of business in the city of Chicago, Ill.; the Neostyle Co. is a corporation existing under and by virtue of the laws of the State of New Jersey and having a principal office and place of business in New York City, N. Y.
2. The trade in stencil-duplicating machines, stencil paper, ink, and other supplies ordinarily used with such duplicating machines constitutes a substantial and increasing volume of interstate commerce.
3. Such trade for several years last past has been and now is being carried on by a number of concerns, including the respondents, all of which are competitors, either actual or potential—except in so far as they may be either self-restrained or otherwise restrained from competing.



4. For several years next prior to October 15, 1914, the respondents had been continuously engaged in interstate commerce and had been engaged generally in the practice in the course of such commerce of selling by and through the A. B. Dick Co., of Illinois, and the Neostyle Co. for use, consumption, or resale within the United States, their stencil duplicating machines on the condition as set forth in what is designated as a "license restriction" attached to each machine, which provided that such machine should be used only with stencil paper and sheets, ink, and other supplies (ordinarily used with stencil duplicating machines) made and sold by the respondents, the A. B. Dick Co., of Illinois, or the Neostyle Co., and the said A. B. Dick Co., of Illinois, and the Neostyle Co. likewise had been continuously engaged in the practice of selling their stencil paper on the condition that it be used only on the machines and with inks made by the said respective companies, thus providing that any purchaser of each of respondent's machines should not use therewith any supplies of any competitor of these respondents, and that each purchaser of certain of respondents' supplies should neither use them on any machine made by any competitor nor with certain other designated supplies of any competitor of these respondents, and these conditions have been continuously and are now being enforced by these respondents, with the effect of substantially lessening competition and tending to create a monopoly in interstate commerce in such articles.

5. Since October 15, 1914, the said respondents have continued and are now continuing the practice of selling their stencil duplicating machines, ink, paper, and other supplies ordinarily used with such machines in the same manner and under the same conditions and restrictions as are fully set out above in paragraph 4, and the effect of these practices or methods is or may be to substantially lessen competition in interstate commerce in such articles or to tend to create a monopoly in interstate commerce in such articles.

**REPORT, FINDINGS AS TO THE FACTS, AND ORDER.**

The above-entitled proceeding coming on for hearing before the Commission on the complaint, answer, and proofs taken the 27th day of April, 1917, and the respondents having appeared on said day by their counsel of record herein, S. O. Edmonds, and by A. B. Dick, president of the respondent, A. B. Dick Co., of Illinois, and said counsel for respondents having announced in open session of the Commission that the respondents would not take any further testimony in this proceeding, and said respondents having filed a statement herein to that effect, and the Commission having taking the proceeding under advisement for final determination, now, on this, the 25th day of May, 1917, on the pleadings and testimony, the Commission makes its report and findings as to the facts and conclusions.

**FINDINGS AS TO THE FACTS.**

(1) That at the time of the filing of the complaint and down to December, 1916, the respondent, the A. B. Dick Co., of New Jersey, owned or controlled the stock of the respondents, the A. B. Dick Co., of Illinois, and the Neostyle Co., of New Jersey; that prior to said date the said A. B. Dick Co., of Illinois, and the said Neostyle Co. had been directly engaged, and the said A. B. Dick Co., of New Jersey, had been, through said other respondents, engaged in the manufacture of stencil duplicating machines, stencil paper, stencil ink, and other duplicating-machine supplies in certain States and in the shipment and sale of each of such commodities to persons in other States and Territories of the United States and in the District of Columbia. That since said date the said A. B. Dick Co., of New Jersey, and the said Neostyle Co. have been dissolved and their assets taken over by said A. B. Dick Co., of Illinois, which has alone continued and is now prosecuting the business above described.

(2) That the trade and commerce in stencil duplicating machines, in stencil duplicating paper, and in stencil duplicating ink each constitutes a substantial and increasing volume of trade between persons in different States in interstate

commerce, which has been for several years last past and is now being carried on by these respondents, and also by a number of other concerns, each of which other concerns is a competitor with the others and with these respondents.

(3) That from a time long prior to October 15, 1914, until December, 1916, all of the respondents have, and since said last-mentioned date the respondent A. B. Dick Co., of Illinois, has alone continuously sold their stencil-duplicating machines in interstate commerce for use or resale on conditions and with restrictions as set forth in what is designated by respondents, both in the answer and in the testimony herein, variously as "license agreement," "license restriction," "limited license," "license plan" of marketing, "sale upon condition"; that as a part of their system of sale, respondents caused to be inscribed upon each of their stencil-duplicating machines sold by them a legend, notice, warning, or purported agreement in words substantially as follows:

On the rotary mimeograph—

#### LICENSE RESTRICTION.

This machine is sold by the A. B. Dick Company with the license restriction that it may be used only with the stencil paper, ink and other supplies, made by A. B. Dick Company, Chicago, U. S. A.

On the rotary neostyle—

#### LICENSE AGREEMENT.

This machine is sold by the Neostyle Company and purchased by the user, with the express understanding that it is licensed to be used only with stencil paper and ink (both of which are patents) made by the Neostyle Company, New York City.

(4) That with each of the various dealers who bought such stencil-duplicating machines from respondents for resale, the respondents have made, and the respondent A. B. Dick Co., of Illinois, is still making, agreements, a part of each of which is as follows as to the respective machines named therein:

As to mimeographs:

2. The right to use mimeographs purchased under the terms of this agreement is dependent upon the full performance of the

conditions of the license restriction attached to each of said mimeographs.

3. The party of the second part covenants and agrees not to sell any of said mimeographs or mimeograph supplies outside of (here is inserted the territory), nor to sell any supplies for use with mimeographs except those made by and procured from the party of the first part; nor to sell or otherwise dispose of any mimeograph supplies to any dealer or agent, but only to users of said mimeographs; nor to sell or otherwise dispose of any mimeograph or mimeograph supplies, either directly or indirectly, to any persons or concerns not entitled to purchase the same.

4. The party of the second part covenants and agrees \* \* \* to pay for such mimeographs and supplies as hereinabove specified, and to report in detail monthly to the party of the first part as to the names and addresses of persons or concerns to whom such mimeographs have been sold, including the consecutive numbers by which the mimeographs are recorded.

As to the neostyle:

1. The right to use neostyles purchased under the terms of this agreement is dependent upon the full performance of the conditions of the license restrictions attached to each of said neostyles.

2. The party of the second part covenants and agrees \* \* \* to report in detail monthly to the party of the first part as to the names and addresses of persons or concerns to whom said rotary neostyles have been sold, including the serial numbers by which said rotary neostyles are recorded.

3. The party of the second part covenants and agrees not to sell any rotary neostyles or rotary neostyle supplies outside of (here is inserted the territory); nor to sell any supplies for use with rotary neostyles except those made by and procured from the party of the first part; nor to sell or otherwise dispose of any of said rotary neostyle supplies to any dealer, but only to users of rotary neostyles; nor to sell or otherwise dispose of any rotary neostyles or rotary neostyle supplies, either directly or indirectly, to any person not entitled to purchase the same.

(5) That from a time prior to October 15, 1914, until December, 1916, all of the respondents have, and since said last-mentioned date the respondent A. B. Dick Co., of Illinois, has alone continuously sold in interstate commerce their stencil duplicating papers with restrictions or conditions inscribed thereon substantially in one of the following forms—either—

This composite stencil sheet is sold by the A. B. Dick Company with the license restriction that it may be used only on Edison's

rotary mimeograph No. 75, and only with ink made by said company. \* \* \* (This stub is licensed for use only once.)

OR—

This composite stencil sheet is sold by the Neostyle Company with the license restriction that it may be used only on rotary neostyles and only with ink made by said company. The stub is licensed for use only once.

(6) That the respondents, on each of their cans of stencil ink sold, caused to be inscribed one of the following notices:

Notice to mimeograph users: Every mimeograph is sold with a proper license restriction covering the use of stencil paper, ink, and other supplies, and is so marked.

Notice to rotary neostyle users: The rotary neostyle is sold with a proper license restriction covering the use of stencil paper, ink, and other supplies, and is so marked.

(7) That certain parts of certain of respondents' stencil duplicating machines and certain parts of their stencil papers were and are covered by letters patent.

(8) That the respondents' stencil duplicating machine supplies have been and are now being sold at a large profit and at prices substantially higher than the prices at which supplies of their competitors, of a character and quality satisfactory to users of mimeographs and neostyles, could have been and can at this time be purchased.

(9) That the conditions or restrictions imposed by the respondents in the sale of their stencil duplicating machines, or their plan of marketing such machines, herein found to be generally used by the respondents, (a) have compelled, and do compel, purchasers and users of such machines to purchase stencil duplicating paper, stencil duplicating ink, and other stencil duplicating supplies exclusively from the respondents, and at prices substantially higher than prices at which supplies of competitors of these respondents, satisfactory to many of such purchasers and users, could have been and can now be purchased; (b) have prevented, and do prevent, competing manufacturers from selling their stencil duplicating paper, stencil duplicating ink, and other stencil duplicating supplies for use with stencil duplicating machines sold by respondents; and (c) have prevented, and do prevent, dealers from selling stencil duplicating paper,

stencil duplicating ink, and other stencil duplicating supplies of competitors of these respondents, and in particular have prevented, and do prevent, dealers from selling such supplies of competitors of respondents for use with respondents' stencil duplicating machines.

(10) That the conditions or restrictions imposed by the respondents in the sale of their stencil paper and the plan of marketing such paper (a) have compelled, and may compel, purchasers or users of such paper to purchase their stencil duplicating machines, stencil ink, and other stencil duplicating machine supplies from the respondents exclusively, and at prices substantially higher than prices at which stencil duplicating ink and other stencil duplicating machine supplies of competitors of these respondents may be purchased; and (b) do and may prevent competing manufacturers from selling their machines, ink, and supplies for use with respondents' stencil paper.

(11) That for the year 1915 the respondents controlled in money value of sales approximately 85.1 per cent of the commerce in the United States in stencil duplicating machines, approximately 88.2 per cent of such commerce in stencil duplicating paper, and approximately 79.9 per cent of such commerce in stencil duplicating ink, and that such percentages represent substantially the present ratio of respondents' business to the total business and commerce done in the United States in these articles.

(12) That the respondent, A. B. Dick Co., of Illinois, is and has been aggressively seeking further to increase its interstate trade and commerce in stencil duplicating machines, stencil paper, ink, and other supplies for such machines.

#### CONCLUSIONS.

(1) That (a) the sale by the respondents of stencil duplicating machines, stencil paper, or other stencil duplicating machine supplies upon conditions as set forth in the so-called license restriction and in the contracts herein found to be used by respondents, or under the "plan of marketing" herein described and found to be used by them, constitutes a sale upon condition, agreement, and understanding that the

purchaser if a user shall not use the machines or supplies of a competitor or competitors of these respondents, and, if the purchaser be a dealer, that he shall not use nor sell for use with the respondents' machines or supplies the machines or supplies of a competitor or competitors of these respondents; and (b) that the effect of the condition, agreement, and understanding is such that it has substantially lessened, and does and may substantially lessen, competition in interstate commerce in such stencil duplicating machines and supplies therefor.

(2) That the sale by the respondents of their stencil duplicating machines and stencil paper upon the condition, agreement, or understanding herein described and found to be used by the respondents, and the plan of marketing such machines, paper, and other supplies, is in violation of section 3 of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, in that the effect thereof has been, is, and may be to substantially lessen competition and tend to create a monopoly in interstate commerce in the manufacture and sale of such stencil duplicating machines, stencil paper, stencil ink, and other supplies.

ORDER TO CEASE AND DESIST.

The above entitled proceeding being at issue upon the complaint of the Commission and the answer of the respondents, and the testimony having been reduced to writing and filed, and the Commission on the date hereof having made and filed a report containing its findings as to the facts and its conclusions that the respondents have violated, and are now violating, section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which said report is hereby referred to and made a part hereof: Therefore

*It is ordered*, That the respondent, the A. B. Dick Co., of Illinois, its officers and agents, cease and desist from directly or indirectly making any sale or contract for sale in interstate commerce of its stencil duplicating machines or stencil

paper on the condition, agreement, or understanding, whether embodied in contract, license restriction, notice, or in whatever manner imposed, that the purchaser or purchasers thereof shall not use therewith, or when the purchaser be a dealer, shall not use or sell for use in connection therewith, the stencil duplicating machines, stencil paper, stencil ink, or other stencil duplicating machine supplies of competitors of the respondent.

*It is further ordered*, That the respondent, the A. B. Dick Co., of Illinois, its officers and agents, cease and desist from enforcing any condition, restriction, or requirement heretofore imposed in connection with the sale, or embodied in a contract for sale, of its stencil duplicating machines or stencil duplicating paper, that the purchaser shall not use or sell for use, with such stencil duplicating machines or stencil paper, the stencil duplicating machines, stencil duplicating ink, stencil paper, or other stencil duplicating supplies of competitors of these respondents:

*Provided*, That respondent, A. B. Dick Co., of Illinois, is hereby granted not to exceed 90 days from the date hereof within which to make such changes in its business methods as will enable it to fully comply with this order.

#### RESOLUTION.

Whereas on the 25th day of May, 1917, the Commission issued an order directing the A. B. Dick Co., of Illinois, to cease and desist from selling its stencil duplicating machines and stencil paper upon the condition, agreement, or understanding that the purchaser or user should not use therewith machines or supplies of competitors of the said A. B. Dick Co.; and

Whereas a period of 90 days was given the A. B. Dick Co. in which to make such changes in its method of doing business as to conform to the order; and

Whereas it is desirable that the Commission know what changes the said company makes in its plan of marketing its machines and supplies as a result of this order: Now, therefore, be it

*Resolved*, That under the authority conferred on the commission by paragraph (b) of section 6 of "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, the said A. B. Dick Co., of Illinois, be, and the same is hereby, required within 30 days after such changes in the conduct of its business have been made to make a special report to the Federal Trade Commission fully setting forth the nature



of such changes and setting forth in complete detail the plan or plans adopted for the future sale of such machines and supplies, together with any contracts, agreements, or understandings, by warranty or otherwise, proposed to be attached to the future sale or contract for sale by respondent of its machines and supplies, either for resale or use of such machines or supplies.

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FEDERAL TRADE COMMISSION *v.* MUENZEN  
SPECIALTY COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER  
26, 1914.

Docket No. 7.—July 14, 1917.

SYLLABUS.

Where a dealer in cleaning and sweeping devices—

- (a) represented to the public that it was a vacuum cleaner specialist or expert and impartial adviser, and solicited inquiries from the public concerning the merits of different types of cleaners, the fact being that it was especially interested in the sale of two such cleaners, and that it invariably recommended one of the cleaners in which it was interested and frequently disparaged competitive devices;
- (b) tampered with and knowingly used for demonstration purposes improperly adjusted competitive cleaners, but properly adjusted the cleaners in which it was interested;
- (c) made false and injurious statements to prospective customers concerning the material of which competitive cleaners were constructed and concerning the reliability and financial condition of manufacturers of competitive cleaners;
- (d) so advertised annual and special sales of cleaners as to convey the impression of an unusual or especially advantageous offer, the fact being that its prices during such sales were the same as those obtaining at other times;
- (e) falsely represented its method of purchasing certain nonrecommended cleaners and its consequent ability to sell them at very low prices, for the purpose of securing the names of prospective purchasers of cleaners, disparaging such nonrecommended cleaners, and recommending cleaners in which it was especially interested; and
- (f) so advertised the cleaner especially made for it as to convey to the public the false impression that it was being offered at less than the regular price:

*Held*, That such acts constituted unfair methods of competition, in violation of section 5 of the act of September 26, 1914.

## COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the Muenzen Specialty Co., hereinafter referred to as respondent, has been during the two years last past and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Muenzen Specialty Co., is a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office and place of business at the city of New York, in said State, and is now and was at all times hereinafter mentioned engaged in selling in interstate commerce hand and electric vacuum and suction cleaners and sweepers and other cleaning and sweeping devices.

PAR. 2. That said devices are sold and distributed by respondent in interstate commerce to many customers in various States in direct competition with manufacturers and dealers in such commerce in similar devices.

PAR. 3. That the respondent, by extensive advertising in publications circulated in interstate commerce and by correspondence with numerous customers and prospective purchasers in various States, holds itself out to the public as a vacuum-cleaner specialist or expert and impartial adviser, stating that it does not manufacture any vacuum cleaners and is not especially interested in any one kind of cleaner, and as such impartial adviser solicits inquiries from said prospective purchasers and the public concerning the merits of various types of cleaners, and invariably recommends the Imperial electric vacuum cleaner or the Eureka electric vacuum cleaner, and frequently disparages competitive devices, whereas in fact the respondent is not an impartial adviser, but, on the contrary, is especially interested in the sale of the said Imperial and Eureka cleaners by reason of

the fact that the said Imperial cleaner is manufactured especially for the Muenzen Specialty Co., and said company is an agent for the sale of the said Eureka cleaner, and the further fact that the amount of profit on said Imperial cleaner is considerably greater than the profit made on the sale of the majority of the other types of cleaners so advertised by the respondent.

PAR. 4. That the respondent, by extensive advertising in publications, circulated in interstate commerce, and by correspondence with numerous customers and prospective customers in various States, holds itself out as a vacuum-cleaner specialist or expert and impartial adviser, and as such has demonstrated to prospective customers vacuum sweepers and cleaners produced by various manufacturers, for the purpose of comparing the results obtained by such sweepers and cleaners with the results obtained by cleaners in the sale of which respondent is especially interested; and for the purpose of making such demonstrations has tampered with and failed to properly adjust such competitive cleaners, while properly adjusting the cleaners in which it is interested, thus giving prospective customers the impression that such competitive cleaners are less efficient than they are in fact, or that they are not adapted for the use for which they are intended to be put by such prospective purchasers, thus facilitating the sale of the cleaners in which respondent is especially interested.

PAR. 5. That the respondent has made false and injurious statements to prospective customers concerning the material of which certain competitive cleaners are constructed and the cost of production of said cleaners, for the purpose of facilitating the sale of cleaners in which respondent is especially interested.

PAR. 6. That the respondent, by advertisements extensively circulated in interstate commerce, has advised prospective purchasers to consider the financial condition of manufacturers of vacuum cleaners before purchasing, impressing upon them the difficulty or impossibility of securing repair parts in the event of the failure of such manufacturers, and has made statements to such prospective purchasers concerning the reliability and financial condition of various manu-

facturers, which statements were untrue in fact and calculated to prevent the sale of cleaners produced by said manufacturers, and to facilitate the sale of cleaners in which the respondent is especially interested.

PAR. 7. That the respondent, in publications extensively circulated in interstate commerce, has advertised annual and special sales of vacuum and suction cleaners and sweepers in such a manner as to convey to the public the impression of an unusual or especially advantageous offer for a limited period, whereas in fact the prices during such annual and special sales were no different than the prices obtained before and after such sales.

PAR. 8. That the respondent, by extensive advertising in publications circulated in interstate commerce, and by correspondence with numerous customers and prospective customers in various States, has conveyed the impression that the reason for the low prices so advertised is the fact that said respondent purchases in large quantities for cash and sells directly to consumers; whereas in fact the large majority of the sweepers and cleaners so advertised are not purchased in large quantities, but on the contrary are sold only when customers insist upon purchasing them instead of said Imperial or Eureka cleaners recommended by the respondent, and the true reason for advertising nonrecommended cleaners at greatly reduced prices is not to supply the demand thus created for such cleaners, but to secure the names and addresses of prospective users of such cleaners, and, as a vacuum-cleaner expert and alleged impartial adviser, to disparage and express unfavorable opinions of such cleaners, and highly recommend the cleaners in the sale of which the respondent is interested, and to thereby effect the sale of said recommended cleaners.

PAR. 9. That the respondent, in publications extensively circulated in interstate commerce, has continuously advertised in such a manner as to convey to the public the impression that the regular price of the said Imperial cleaner is higher than the advertised price, whereas in fact the advertised price is no lower than that usually obtained by the respondent, which controls the sale of said cleaner.

FEDERAL TRADE COMMISSION  
FINDINGS AS TO

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FINDINGS AS TO THE FACTS

- FINDINGS AS TO THE FACTS
- (1) That the respondent, Muenzen Specialty Corporation organized and existing under and by the laws of the State of New York, having its principal office and place of business at the city of New York, State, and is now and was at all times hereinafter mentioned engaged in selling in interstate commerce hand and power vacuum and suction cleaners and sweepers and other cleaning and sweeping devices.
- (2) That said devices are sold and distributed by respondent in interstate commerce to many customers in various States in direct competition with manufacturers and dealers in such commerce by extensive advertising in publications circulated in interstate commerce and by correspondence with numerous customers and prospective purchasers in various States holds itself out to the public as an independent specialist or expert and impartial adviser, and that it does not manufacture any kind of cleaner, sweeper or other device and answers inquiries from said customers and prospective purchasers concerning the merits of its products.

of various types of cleaners, and invariably recommends the Imperial electric vacuum cleaner or the Eureka electric vacuum cleaner and frequently disparages competitive devices, whereas in fact the respondent is not an impartial adviser, but, on the contrary, is especially interested in the sale of the said Imperial and Eureka cleaners by reason of the fact that the said Imperial cleaner is manufactured especially for the Muenzen Specialty Co., and said company is an agent for the sale of the said Eureka cleaner, and the further fact that the amount of profit on said Imperial cleaner is considerably greater than the profit made on the sale of the majority of the other types of cleaners so advertised by the respondent.

(4) That the respondent, by extensive advertising in publications, circulated in interstate commerce, and by correspondence with numerous customers and prospective customers in various States, holds itself out as a vacuum-cleaner specialist or expert and impartial adviser, and as such has demonstrated to prospective customers vacuum sweepers and cleaners produced by various manufacturers, for the purpose of comparing the results obtained by such sweepers and cleaners with the results obtained by cleaners in the sale of which respondent is especially interested; and for the purpose of making such demonstrations has tampered with and failed to properly adjust such competitive cleaners while properly adjusting the cleaners in which it is interested, thus giving prospective customers the impression that such competitive cleaners are less efficient than they are in fact, or that they are not adapted for the use for which they are intended to be put by such prospective purchasers, thus facilitating the sale of the cleaners in which respondent is especially interested.

(5) That the respondent has made false and injurious statements to prospective customers concerning the material of which certain competitive cleaners are constructed and the cost of production of said cleaners, for the purpose of facilitating the sale of cleaners in which respondent is especially interested.

(6) That the respondent, by advertisements extensively circulated in interstate commerce, has advised prospective purchasers to consider the financial condition of manufacturers of vacuum cleaners before purchasing, impressing

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, Muenzen Specialty Co., has been during the two years last past, and now is, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and fully stating its charges in that respect, and the said respondent having made and filed its answer to said complaint, wherein it admitted all of the charges therein set forth, now on this 14th day of July, 1917, on said complaint and answer thereto, the Commission makes its report and findings as to the facts and conclusions.

### FINDINGS AS TO THE FACTS.

(1) That the respondent, Muenzen Specialty Co., is a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office and place of business at the city of New York, in said State, and is now and was at all times hereinafter mentioned engaged in selling in interstate commerce hand and electric vacuum and suction cleaners and sweepers and other cleaning and sweeping devices.

(2) That said devices are sold and distributed by respondent in interstate commerce to many customers in various States in direct competition with manufacturers and dealers in such commerce in similar devices.

(3) That the respondent, by extensive advertising in publications circulated in interstate commerce and by correspondence with numerous customers and prospective purchasers in various States, holds itself out to the public as a vacuum-cleaner specialist or expert and impartial adviser, stating that it does not manufacture any vacuum cleaners and is not especially interested in any one kind of cleaner, and as such impartial adviser solicits inquiries from said prospective purchasers and the public concerning the merits

of various types of cleaners, and invariably recommends the Imperial electric vacuum cleaner or the Eureka electric vacuum cleaner and frequently disparages competitive devices, whereas in fact the respondent is not an impartial adviser, but, on the contrary, is especially interested in the sale of the said Imperial and Eureka cleaners by reason of the fact that the said Imperial cleaner is manufactured especially for the Muenzen Specialty Co., and said company is an agent for the sale of the said Eureka cleaner, and the further fact that the amount of profit on said Imperial cleaner is considerably greater than the profit made on the sale of the majority of the other types of cleaners so advertised by the respondent.

(4) That the respondent, by extensive advertising in publications, circulated in interstate commerce, and by correspondence with numerous customers and prospective customers in various States, holds itself out as a vacuum-cleaner specialist or expert and impartial adviser, and as such has demonstrated to prospective customers vacuum sweepers and cleaners produced by various manufacturers, for the purpose of comparing the results obtained by such sweepers and cleaners with the results obtained by cleaners in the sale of which respondent is especially interested; and for the purpose of making such demonstrations has tampered with and failed to properly adjust such competitive cleaners while properly adjusting the cleaners in which it is interested, thus giving prospective customers the impression that such competitive cleaners are less efficient than they are in fact, or that they are not adapted for the use for which they are intended to be put by such prospective purchasers, thus facilitating the sale of the cleaners in which respondent is especially interested.

(5) That the respondent has made false and injurious statements to prospective customers concerning the material of which certain competitive cleaners are constructed and the cost of production of said cleaners, for the purpose of facilitating the sale of cleaners in which respondent is especially interested.

(6) That the respondent, by advertisements extensively circulated in interstate commerce, has advised prospective purchasers to consider the financial condition of manufacturers of vacuum cleaners before purchasing, impressing



upon them the difficulty or impossibility of securing repair parts in the event of the failure of such manufacturers and has made statements to such prospective purchasers concerning the reliability and financial condition of various manufacturers; which statements were untrue in fact and calculated to prevent the sale of cleaners produced by said manufacturers, and to facilitate the sale of cleaners in which the respondent is specially interested.

(7) That the respondent, in publications extensively circulated in interstate commerce, has advertised annual and special sales of vacuum and suction cleaners and sweepers, in such a manner as to convey to the public the impression of an unusual or especially advantageous offer for a limited period, whereas in fact the prices during such annual and special sales were no different than the prices obtained before and after such sales.

(8) That the respondent, by extensive advertising in publications circulated in interstate commerce and by correspondence with numerous customers and prospective customers in various States, has conveyed the impression that the reason for the low prices so advertised is the fact that said respondent purchases in large quantities for cash and sells directly to consumers; whereas in fact the large majority of the sweepers and cleaners so advertised are not purchased in large quantities, but, on the contrary, are sold only when customers insist upon purchasing them instead of said Imperial or Eureka cleaners recommended by the respondent, and the true reason for advertising nonrecommended cleaners at greatly reduced prices is not to supply the demand thus created for such cleaners, but to secure the names and addresses of prospective users of such cleaners, and as a vacuum-cleaner expert and alleged impartial adviser to disparage and express unfavorable opinions of such cleaners, and highly recommend the cleaners in the sale of which the respondent is interested, and to thereby effect the sale of said recommended cleaners.

(9) That the respondent, in publications extensively circulated in interstate commerce, has continuously advertised in such a manner as to convey to the public the impression that the regular price of the said Imperial cleaner is higher than

the advertised price, whereas in fact the advertised price is no lower than that usually obtained by the respondent which controls the sale of said cleaner.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts, and each and all of them, are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondent, Muenzen Specialty Co., having made and filed its answer to said complaint, wherein it admitted all of the charges therein set forth, and the Commission on the date hereof having made and filed a report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Therefore

*It is ordered*, That the respondent, Muenzen Specialty Co., cease and desist from—

(1) Representing to the public, directly or indirectly, that it is an impartial adviser and not especially interested in any one kind of cleaner, so long as it is especially interested in the sale of the Imperial electric vacuum cleaner, the Eureka electric vacuum cleaner, or any other sweeping or cleaning device, by reason of the fact that any such devices are manufactured especially for respondent, or that it is an agent for the sale of any such devices, unless special interest is fully disclosed at the time such representations are made.

(2) Tampering with competitive cleaners used in demonstrations or demonstrating with sweepers or cleaners not properly adjusted.

(3) Making false and injurious statements to prospective customers concerning the material of which competitive cleaners are constructed or concerning the cost of production of such competitive cleaners.

(4) Making false statements to prospective customers concerning the reliability or financial condition of manufacturers of vacuum cleaners calculated to prevent the sale of cleaners produced by said manufacturers.

(5) Advertising annual or special sales of vacuum and suction sweepers and cleaners in such a manner as to convey to the public the impression of an unusual or especially advantageous offer for a limited period, when in fact the prices during such sales are no different than the prices obtained before or after such sales.

(6) Falsely representing or conveying the false impression that respondent purchases vacuum sweepers and cleaners in large quantities for cash and is thereby enabled to sell them at the prices at which they are offered.

(7) Representing or conveying to the public the impression that the regular price of the Imperial electric vacuum cleaner is higher than the advertised price, when in fact the advertised price is no lower than that usually obtained by the respondents for said cleaner.

*Provided*, That the respondent, the Muenzen Specialty Co., is hereby granted not to exceed 60 days from the date hereof within which to make such changes in its advertising as will enable it to fully comply with this order.

## FEDERAL TRADE COMMISSION

v.

BUREAU OF STATISTICS OF THE BOOK PAPER MANUFACTURERS, CHARLES F. MOORE, SECRETARY OF THE BUREAU OF STATISTICS, ET AL.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 17.—November 8, 1917.

### SYLLABUS.

Where the members of an unincorporated association engaged in the manufacture and sale of by far the greater portion of the book-

print paper manufactured, sold, and used in the United States, engaged in a concerted movement for the purpose of (1) enhancing the prices of book-print paper, (2) maintaining such enhanced prices, (3) bringing about substantial uniformity in such prices:

*Ordered*, That the voluntary dissolution of said association be approved, that said association and the secretary and members thereof cease and desist from maintaining such organization and from carrying out the purposes thereof, and that the secretary of said association cease and desist from continuing the same or from creating, managing, conducting, working for, or becoming connected in any capacity with any other bureau or organization having similar objects.

### COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the bureau of statistics of the Book Paper Manufacturers; Chas. F. Moore, secretary of the Bureau of Statistics; American Writing Paper Co.; Dill & Collins Co.; Diana Paper Co.; New York & Pennsylvania Co.; M. & W. H. Nixon Paper Co.; Oxford Paper Co.; Ticonderoga Pulp & Paper Co.; Tileston & Hollingsworth Co.; Wanaque River Paper Co.; S. D. Warren & Co.; West Virginia Pulp & Paper Co.; Bardeen Paper Co.; Bergstrom Paper Co.; Bryant Paper Co.; Champion Coated Paper Co.; Everett Pulp & Paper Co.; Kimberly-Clark Co.; King Paper Co.; Lakeside Paper Co.; Mead Pulp & Paper Co.; Miami Paper Co.; Monarch Paper Co.; and Rex Paper Co., all of whom are hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public issues this complaint, stating its charges in that respect, on information and belief, as follows:

1. That all of the said respondents, except the Bureau of Statistics, Charles F. Moore, secretary of the Bureau of Statistics, and S. D. Warren & Co., are corporations organized and existing under and by virtue of the laws of their respec-

tive States and having their principal offices and places of business as hereinafter designated:

Name.	Organized under the laws of—	Principal office at—
American Writing Paper Co.....	Massachusetts.....	Holyoke, Mass.
Dill & Collins Co.....	Pennsylvania.....	Philadelphia, Pa.
Diana Paper Co.....	New York.....	Harrisville, N. Y.
New York & Pennsylvania Co.....	Pennsylvania.....	200 Fifth Avenue, New York City.
M. & W. H. Nixon Paper Co.....	do.....	Manayunk, Philadelphia, Pa.
Oxford Paper Co.....	Maine.....	200 Fifth Avenue, New York City.
Ticonderoga Pulp & Paper Co.....	New York.....	Do.
Tileston & Hollingsworth Co.....	Massachusetts.....	Boston, Mass.
Wanaque River Paper Co.....	New Jersey.....	Wanaque N. J.
West Virginia Pulp & Paper Co.....	Delaware.....	200 Fifth Avenue, New York City.
Bardeen Paper Co.....	Michigan.....	Otsego, Mich.
Bergstrom Paper Co.....	Wisconsin.....	Neenah, Wis.
Bryant Paper Co.....	Michigan.....	Kalamazoo, Mich.
Champion Coated Paper Co.....	Ohio.....	Hamilton, Ohio.
Everett Pulp & Paper Co.....	Washington.....	Everett, Wash.
Kimberly-Clark Co.....	Wisconsin.....	Neenah, Wis.
King Paper Co.....	Michigan.....	Kalamazoo, Mich.
Lakeside Paper Co.....	Wisconsin.....	Neenah, Wis.
Mead Pulp & Paper Co.....	Ohio.....	Dayton, Ohio.
Miami Paper Co.....	do.....	West Carrollton, Ohio.
Monarch Paper Co.....	Michigan.....	Kalamazoo, Mich.
Rex Paper Co.....	do.....	Do.
S. D. Warren & Co., partnership composed of Samuel D. Warren, Roger D. Smith, Herbert Mason, and ——— Nye, doing business under the firm name and style of S. D. Warren & Co.	do.....	Boston, Mass.

2. That respondent, Charles F. Moore, is secretary of an unincorporated association, without capital stock, organized for the profit of its members, known as the Bureau of Statistics of the Book Paper Manufacturers, composed of the various corporations and partnership respondents, and having its principal office at the Vanderbilt Hotel, New York City.

3. That the several corporations and partnership respondents, members of said Bureau of Statistics, are now and at all times hereinafter mentioned have been engaged generally in manufacturing and selling book-print paper in commerce among the several States and Territories of the United States. That the book-print paper industry is a large and important one, with annual sales in excess of \$70,000,000 per annum.

4. That in the aggregate said respondents manufacture, sell, and control by far the greater portion of the entire book-print paper manufactured, sold, and used in the United States.

5. That said respondents through said Bureau of Statistics and particularly through its secretary, Charles F. Moore, are now and for about two years last past have been engaged in a concerted movement unduly to enhance the prices of book-print paper and to maintain said enhanced prices and to bring about a substantial uniformity of such prices, due allowance being made for grades, brands, etc. As a result of such activities prices of book-print paper in the United States have been unduly enhanced, and such enhanced prices are being maintained. Such enhancement and substantial uniformity of prices have been effected and are being maintained through the medium of telephone communications, by correspondence, and by personal meetings between the secretary and various respondent members of said Bureau of Statistics, and by like communications between various members thereof, and by such communications between members and others engaged in the book-print paper industry.

#### REPORT, STIPULATIONS, AND ORDER.

Pursuant to adjournment, on this 8th day of November, 1917, the above cause came on before the Commission for further proceedings, at which William T. Chantland, trial counsel for the Commission, presented to the Commission identical stipulations of each of the several respondents duly signed under proper authority of record by the counsel for each of the several respondents or by the several respondents in person.

#### STIPULATIONS.

The identical stipulation signed and agreed to by each of the remaining respondents, to wit, Bureau of Statistics of the Book Paper Manufacturers, Charles F. Moore, secretary of the Bureau of Statistics, American Writing Paper Co., Dill & Collins Co., Diana Paper Co., New York & Pennsylvania Co., Martin & Wm. H. Nixon Paper Co., Oxford Paper Co., Ticonderoga Pulp & Paper Co., Tileston & Hollingsworth Co., Wanaque River Paper Co., S. D. Warren & Co., West Virginia Pulp & Paper Co., Bergstrom Paper Co., Bryant Paper Co., Champion Coated Paper Co., Everett Pulp & Paper Co., Kimberly-Clark Co., King Paper Co., Lakeside

Paper Co., Mead Pulp & Paper Co., Miami Paper Co., Monarch Paper Co., Rex Paper Co., is in language as follows:

It is hereby stipulated and agreed, subject to the approval of the Federal Trade Commission, by and between the trial counsel representing the Federal Trade Commission and the several respondents represented by their counsel of record signatory hereto, that the Federal Trade Commission shall enter the following order disposing of this complaint:

"It is hereby ordered by the Federal Trade Commission

"(I) That the dissolution of the Bureau of Statistics of the Book Paper Manufacturers, as set forth in the answers and amended answers in this complaint, be and the same is hereby approved;

"(II) That each and all of the respondents signatory hereto [here insert in the order itself the names of the stipulating respondents in the formal order when made and entered of record] shall forever cease and desist from continuing their respective memberships in the said Bureau of Statistics of the Book Paper Manufacturers, or from reorganizing the said bureau, and shall not create or join or become members of any such bureau or similar organization having for its purpose the objects, or any of them, charged in the complaint of this case as having been the object of the said Bureau of Statistics, and shall forever cease and desist from carrying on such activities as are charged in the complaint to have been carried on by the said bureau, and from engaging in any concerted movement (1) to enhance prices of book-print paper, or (2) to maintain such enhanced prices, or (3) to bring about substantial uniformity of such prices, or (4) to effect or maintain such enhancement or such uniformity of prices through the medium of telephone communication, or by correspondence, or by personal meetings, or through other communications, or in any other manner whatsoever.

"(III) That the respondent Charles F. Moore be, and is hereby, ordered to forever cease and desist from continuing said Bureau of Statistics of the Book Paper Manufacturers, or from reorganizing such bureau, or from creating, managing, conducting, working for or becoming connected in any capacity with any other bureau or similar organization having for its purpose the objects charged in the complaint as having been the objects of said Bureau of Statistics, or similar objects, and from being connected with or assisting in any concerted movement to enhance prices of book print paper or maintain such enhanced prices or to bring about substantial uniformity of such prices or from aiding and assisting in any capacity in effecting or maintaining such enhancement or such uniformity of prices through the medium of telephone communication or by correspondence or by personal meetings or through other communications or in any other manner whatsoever."

Whereupon, upon the pleadings and the stipulations agreed to and signed by the several respondents, on motion duly made

and carried the stipulations were approved and the following order disposing of said complaint as to each of said stipulating respondents was made and entered:

### ORDER TO CEASE AND DESIST.

*It is hereby ordered* by the Federal Trade Commission—

(I) That the dissolution of the Bureau of Statistics of the Book Paper Manufacturers, as set forth in the answers and amended answers in this complaint, be, and the same is hereby, approved.

(II) That each and all of the respondents signatory hereto, to wit, Bureau of Statistics of the Book Paper Manufacturers, Charles F. Moore, secretary of the Bureau of Statistics, American Writing Paper Co., Dill & Collins Co., Diana Paper Co., New York & Pennsylvania Co., Martin & Wm. H. Nixon Paper Co., Oxford Paper Co., Ticonderoga Pulp & Paper Co., Tileston & Hollingsworth Co., Wanaque River Paper Co., S. D. Warren & Co., West Virginia Pulp & Paper Co., Bergstrom Paper Co., Bryant Paper Co., Champion Coated Paper Co., Everett Pulp & Paper Co., Kimberly-Clark Co., King Paper Co., Lakeside Paper Co., Mead Pulp & Paper Co., Miami Paper Co., Monarch Paper Co., Rex Paper Co., shall forever cease and desist from continuing their respective memberships in the said Bureau of Statistics of the Book Paper Manufacturers, or from reorganizing the said bureau, and shall not create or join or become members of any such bureau or similar organization having for its purpose the objects, or any of them, charged in the complaint of this case as having been the object of the said Bureau of Statistics, and shall forever cease and desist from carrying on such activities as are charged in the complaint to have been carried on by the said bureau, and from engaging in any concerted movement (1) to enhance prices of book-print paper, or (2) to maintain such enhanced prices, or (3) to bring about substantial uniformity of such prices, or (4) to effect or maintain such enhancement or such uniformity of prices through the medium of telephone communication, or by correspondence, or by personal meetings, or through other communications, or in any other manner whatsoever.

(III) That the respondent, Charles F. Moore, be, and is hereby, ordered to forever cease and desist from continuing



said Bureau of Statistics of the Book Paper Manufacturers, or from reorganizing such bureau, or from creating, managing, conducting, working for or becoming connected in any capacity with any other bureau or similar organization having for its purpose the objects charged in the complaint as having been the objects of said Bureau of Statistics, or similar objects, and from being connected with or assisting in any concerted movement to enhance prices of book-print paper, or maintain such enhanced prices, or to bring about substantial uniformity of such prices, or from aiding and assisting in any capacity in effecting or maintaining such enhancement, or such uniformity of prices through the medium of telephone communications, or by correspondence, or by personal meetings, or through other communications, or in any other manner whatsoever.

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FEDERAL TRADE COMMISSION *v.* NATIONAL  
BINDING MACHINE CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF THE VIOLATION OF SECTION 3 OF THE ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket No. 10.—December 31, 1917.

SYLLABUS.

Where a manufacturer of gummed-tape moistening machines, also dealing in gummed sealing tape for use in such machines,

I.

- (a) purchased gummed sealing tape from manufacturers thereof, upon the condition, agreement, or understanding that they should not sell the same to any of its competitors;
- (b) proposed to other manufacturers of gummed sealing tape to enter into similar agreements, understandings, or contracts;
- (c) interfered with customers of its competitors and endeavored to coerce them into ceasing to purchase such tape from its competitors and into purchasing the same exclusively from it, by threatening to institute and prosecute against them suits for the alleged infringement of certain patents claimed to be owned by it, such threats not being made in good faith, intending to bring such suits, but for the purpose of injuring competitors, by intimidating, coercing, and driving away their customers;
- (d) exacted, signed, and entered into, "license agreements" with owners and users of competing tape-moistening machines, whereby

such owners were permitted to continue the use thereof only upon the condition that they purchased their supply of gummed sealing tape exclusively from it;

- (e) advertised that it would institute suit for infringement of its patents against all who applied gummed sealing tape by means of its competitors' machines, such threats not being made in good faith, intending to bring such suits, but for the purpose of injuring competitors by intimidating, coercing, and driving away their customers:

*Held*, That the acts described constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914;

## II.

- (f) leased gummed-tape moistening machines on the condition, agreement, or understanding that the lessees should use said machines only with its gummed sealing tape and not with the tape of its competitors, and required the performance of such conditions, agreements, or understandings by the lessees, with the effect that competition in the manufacture and sale of gummed sealing tape had been and might be substantially lessened:

*Held*, That such leases, under the circumstances set forth, constituted violations of section 3 of the act of October 15, 1914.

## COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made, that the National Binding Machine Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief, as follows:

### I.

PARAGRAPH 1. That the respondent, the National Binding Machine Co., is a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office and place of business at the city of New York, in said State, and is now, and was at all the times here-

inafter mentioned, engaged in manufacturing, selling, and leasing, in interstate commerce, a patented gummed-tape moistening machine called a "strip serving" or "binding" machine, known to the trade as "the National Binding Machine," and hereinafter so called, devised and used for moistening gummed sealing tape for use in sealing packages of goods, wares, and merchandise; also in buying and selling, in interstate commerce, large quantities of gummed sealing tape.

PAR. 2. That the Nashua Gummed & Coated Paper Co., of Nashua, N. H., and the Ideal Coated Paper Co., of Brookfield, Mass., are large manufacturers of gummed sealing tape, and that respondent, with the effect of stifling and suppressing competition in interstate commerce in the sale and distribution of such tape, is now purchasing, and for some time past has purchased, gummed sealing tape from said manufacturers in large quantities, upon the agreement, understanding, or condition that the said manufacturers shall not sell gummed sealing tape to any competitor or competitors of respondent; and that with the intent and purpose of stifling and suppressing competition in interstate commerce said respondent has at numerous times and places proposed to other manufacturers of gummed sealing tape to enter into similar agreements, understandings, or contracts with it.

PAR. 3. That said respondent has, from time to time, interfered, and still continues to interfere, with customers of its competitors who use sealing-tape moistening machines other than National Binding Machine, and has endeavored, and continues to endeavor, to coerce them into ceasing to purchase their supply of gummed sealing tape from its competitors and into purchasing the same exclusively from it, by threatening, in case of their failure to do so, and because of such failure, to institute and prosecute suits against them for the alleged infringement of certain patents on said National Binding Machine claimed to be owned by it, and that such threats are not made in good faith, for the purpose of protecting respondent's rights under said patents, but for the purpose of intimidating the customers of competing manufacturers and of injuring competitors by unfairly intimidating, coercing, and driving away their customers.

PAR. 4. That respondent has, from time to time, exacted, signed, and entered into, and still continues to exact, sign, and enter into so-called "license agreements" with the owners and users of tape-moistening machines other than the National Binding Machine, by the terms of which "license agreements" said owners and users of tape-moistening machines other than the National Binding Machine are permitted to continue their use only upon the condition that they shall purchase their supply of gummed sealing tape from the respondents.

PAR. 5. That with the purpose and intent of preventing users of gummed tape from buying it from respondent's competitors, respondent has, from time to time, widely advertised, and still continues so to advertise, by means of circulars to the trade and otherwise, that it will institute suits for infringement of its patents on the National Binding Machine, against all users of gummed sealing tape who apply the same by means of some tape-moistening machine other than the National Binding Machine; and that such threats are not made in good faith, for the purpose of protecting respondent's rights under its patents, but for the purpose of intimidating the customers of competing manufacturers and of injuring competitors by unfairly intimidating, coercing, and driving away their customers.

PAR. 6. That by reason of the unfair methods of competition in commerce above set forth other manufacturers of, and dealers in, gummed sealing tape have been, and are being, injured in their business.

## II.

And the Federal Trade Commission, having reason to believe, from a preliminary investigation made, that the National Binding Machine Co., hereinafter referred to as the respondent, has violated, and is violating, the provisions of section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," further complains against respondent, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondent, the National Binding Machine Co., is a corporation organized and existing under

and by virtue of the laws of the State of New York, having its principal office and place of business at the city of New York, in said State, and is now, and was at all the times hereinafter mentioned, engaged in manufacturing, selling, and leasing, in interstate commerce, a patented gummed-tape moistening machine, called a "strip serving" or "binding" machine, known to the trade as the "National Binding Machine," and hereinafter so called, devised and used for moistening gummed sealing tape for use in sealing package of goods, wares, and merchandise; also in buying and selling, in interstate commerce, large quantities of gummed sealing tape.

PAR. 2. That the respondent, for several years last past, in the course of interstate commerce, has sold and made contracts for sale, and is now selling and making contracts for sale, of large quantities of gummed sealing tape for use, consumption, or resale within the United States, and has fixed, and is now fixing, a price charged therefor, on the condition, agreement, or understanding that the purchasers thereof shall not use or deal in the gummed sealing tape, or other commodities, of a competitor or competitors of respondent; and that the effect of such sales or contracts for sale, conditions, agreements, or understandings, may be, and is, to substantially lessen competition and to tend to create a monopoly in the gummed sealing tape industry.

PAR. 3. That for several years immediately prior to October 15, 1914, respondent, in the course of interstate commerce, generally engaged in the practice of leasing, for use within the United States, large numbers of said National Binding Machines, and fixed a price charged therefor, on the condition, agreement, or understanding that the lessee might use said machine only with the gummed sealing tape of respondent, or purchased of the respondent, and that the lessee should not use with or upon said machines the gummed sealing tape of a competitor or competitors of respondent; that ever since the leasing of said machines, as aforesaid, respondent has been, and now is, requiring the performance by the lessee of the condition, agreement, or understanding on which said leases were so made; and that the effect of such leases and of such conditions, agreements, or understandings,

and of the enforcement thereof, may be, and is, to substantially lessen competition and to tend to create a monopoly in the gummed sealing tape industry.

PAR. 4. That ever since the 15th day of October, 1914, the said respondent has continued, and still continues, the practice of leasing its National Binding Machines in the same manner and on the same condition, agreement, or understanding as set forth in the foregoing paragraph 3, and is now and ever since the leasing of said machines, as aforesaid, has been requiring the performance on the part of the lessees of the said conditions, agreements, or understandings on which said leases were made; and that the effect of such leases and of such conditions, agreements, or understandings and of the enforcement thereof may be, and is, to substantially lessen competition and to tend to create a monopoly in the gummed sealing tape industry.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, the National Binding Machine Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and further alleged that it had reason to believe that said respondent, the National Binding Machine Co., has violated and is violating the provisions of section 3 of the act of Congress approved October 15, 1914, entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and fully stating its charges in those respects, and the respondent having entered its appearance by Lucius E. Varney, Esq., its attorney, and having stipulated of record that the Commission might forthwith proceed to make its findings and order disposing of this proceeding,

the Commission makes its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

(1) That the respondent, the National Binding Machine Co., is a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office and place of business at the city of New York, in said State, and is now, and was at all the times hereinafter mentioned, engaged in manufacturing, selling, and leasing, in interstate commerce, a patented gummed-tape moistening machine called a "strip serving" or "binding" machine, known to the trade as the "National Binding Machine" devised and used for moistening gummed sealing tape for use in sealing packages of goods, wares, and merchandise; also in buying and selling, in interstate commerce, large quantities of gummed sealing tape.

(2) That said gummed sealing tape is bought, sold and distributed, and said gummed-tape moistening machines are leased and distributed, by respondent in interstate commerce, to many customers in various States, in direct competition with manufacturers and dealers in such commerce in similar commodities.

(3) That respondent is now purchasing, and for some time past has purchased, gummed sealing tape from the Nashua Gummed & Coated Paper Co., of Nashua, N. H., and the Ideal Coated Paper Co., of Brookfield, Mass., in large quantities, upon the agreement, understanding or condition that said manufacturers shall not sell gummed sealing tape to any competitor or competitors of respondent; and that said respondent has at numerous times and places proposed to other manufacturers of gummed sealing tape to enter into similar agreements, understandings, or contracts with it.

(4) That respondent has, from time to time, interfered, and continues to interfere, with customers of its competitors who use sealing tape-moistening machines other than National Binding Machines, and has endeavored, and continues to endeavor, to coerce them into ceasing to purchase their supply of gummed sealing tape from its competitors and into purchasing the same exclusively from it, by threat-

ening, in case of their failure so to do, and because of such failure, to institute and prosecute suits against them for the alleged infringement of certain patents on said National Binding Machine claimed to be owned by it, which threats were and are not made in good faith for the purpose of protecting respondent's rights under said patents, but for the purpose of intimidating the customers of competing manufacturers and of injuring competitors by unfairly intimidating, coercing, and driving away their customers.

(5) That respondent has, from time to time exacted, signed, and entered into, and still continues to exact, sign, and enter into so-called "license agreements" with the owners and users of tape-moistening machines other than the National Binding Machine, by the terms of which "license agreements" said owners and users of tape-moistening machines other than the National Binding Machine are permitted to continue their use only upon the condition that they shall purchase their supply of gummed sealing tape from respondent.

(6) That with the purpose and intent of preventing users of gummed tape from buying it from respondent's competitors, respondent has, from time to time, widely advertised, and still continues so to advertise, by means of circulars to the trade and otherwise, that it will institute suits for infringement of its patents on the National Binding Machine, against all users of gummed sealing tape who apply the same by means of tape-moistening machines other than the National Binding Machine; and that such threats are not made in good faith, for the purpose of protecting respondent's rights under its patents, but for the purpose of intimidating the customers of competing manufacturers and of injuring competitors by unfairly intimidating, coercing, and driving away their customers.

(7) That the conditions or restrictions imposed by respondent in the sale of its gummed sealing tape and its plan of marketing such tape, herein found to be generally used by respondent (a) have compelled and may compel purchasers and users of such gummed sealing tape to purchase their supply of same from respondent exclusively, and at prices substantially higher than prices at which gummed



sealing tape of competitors of respondent may be purchased; and (b) do prevent and may prevent competing manufacturers from selling their gummed sealing tape for use with respondent's binding machines.

(8) That for several years immediately prior to October 15, 1914, respondent, in the course of interstate commerce, generally engaged in the practice of leasing, for use within the United States, large numbers of said National Binding Machines, on the condition, agreement, or understanding that the lessee might use said machine only with the gummed sealing tape of respondent, or purchased of the respondent, and that the lessee should not use with or upon said machine the gummed sealing tape of a competitor or competitors of respondent; that ever since the leasing of said machines, as aforesaid, respondent has been, and now is, requiring the performance by the lessees of the condition, agreement, or understanding on which said leases were so made.

(9) That the conditions or restrictions imposed by respondent in the leasing of its binding machines, herein found to be generally used by respondent, (a) have compelled and do compel lessees and users of such binding machine to purchase gummed sealing tape exclusively from respondent, and at prices substantially higher than prices at which gummed sealing tape of competitors of respondent, satisfactory to many of such purchasers and users, could have been and can now be purchased; (b) have prevented and do prevent competing manufacturers from selling their gummed sealing tape for use with National Binding Machines leased by respondent; and (c) have prevented and do prevent dealers from selling gummed sealing tape of competitors of respondent, and in particular, have prevented and do prevent dealers from selling such gummed sealing tape of competitors of respondent for use with respondent's binding machines.

(10) That in December, 1915, respondent had under lease in the United States approximately 15,000 National Binding Machines; that in the year 1915 it controlled, in money value of sales, approximately 38 per cent of the commerce in the United States in gummed sealing tape; and that such number of machines represents substantially the present number

of its binding machines now under lease, and such percentage represents substantially the present ratio of respondent's business in gummed sealing tape to the total business and commerce done in the United States in such commodity.

#### CONCLUSIONS.

(1) That the methods of competition set forth in paragraphs 3, 4, 5, and 6 of the foregoing findings as to the facts, and each and all of them, are under the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

(2) That the acts and practices set forth in paragraphs 7, 8, 9, and 10 of the foregoing findings as to the facts, and each and all of them are, under the circumstances therein set forth, violations of section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," in that their effect has been, is, and may be to substantially lessen competition and tend to create a monopoly in interstate commerce in the manufacture and sale of such gummed sealing tape.

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondent having entered its appearance by Lucius E. Varney, Esq., its attorney, and having stipulated of record that the Commission might forthwith proceed to make its findings and order disposing of this cause, and the Commission on the date hereof having made and filed a report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints

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Binding Machine, such threats not being made in good faith for the purpose of protecting respondent's rights under its patents, but for the purpose of intimidating the customers of competing manufacturers and of injuring competitors by unfairly intimidating, coercing, and driving away their customers.

(5) from leasing said National Binding Machine and fixing a price charged therefor, on the condition, agreement, or understanding that the lessee is to use said machine only with the gummed sealing tape of respondent or purchased of respondent, and that the lessee shall not use with or upon said machine the gummed sealing tape of a competitor or competitors of respondent, and from requiring the performance by the lessees of the conditions, agreements, or understandings on which such leases have been heretofore made.

*Provided*, That with respect to paragraph 5 only of this order, the respondent, the National Binding Machine Co., is hereby granted not to exceed 60 days from the date hereof within which to readjust and make such changes in its methods of leasing, selling, handling and dealing in said National Binding Machine as will make its conduct and practices in that behalf conform to the requirements of this order.

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## FEDERAL TRADE COMMISSION

v.

ASSOCIATION OF FLAG MANUFACTURERS OF  
AMERICA, HAROLD M. TURNER, CHAIRMAN OF  
THE ASSOCIATION OF FLAG MANUFACTURERS  
OF AMERICA, ET AL.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS, APPROVED SEPTEMBER 26, 1914.

Docket No. 18.—January 29, 1918.

### SYLLABUS.

Where certain corporations, partnerships, and individuals engaged in the manufacture and sale of American flags formed a voluntary unincorporated association, of which another individual, not a flag

manufacturer, was the chairman and principal organizer, one of the objects of said association being to engage in a concerted movement to enhance the prices of American flags and to maintain such enhanced prices and bring about a general uniformity therein:

*Ordered*, (1) That said corporations, partnerships, and individuals, manufacturers of flags and members of said association, cease and desist from continuing their membership therein, or from creating, joining, or becoming members of any organization having similar purposes, or from carrying on activities similar to those charged to have been carried on by said association, or to engage in any concerted movement to enhance or maintain the prices of flags or to bring about a general uniformity therein; and (2) that said individual chairman and principal organizer cease and desist from any connection with said association and from creating, managing, working for, or becoming connected with that or any other organization having similar objects.

### COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Association of Flag Manufacturers of America; Harold M. Turner, chairman of the Association of Flag Manufacturers of America; American Flag Co.; Annin & Co.; De Grauw, Aymar & Co.; C. D. Durkee & Co.; Andrew Mills & Sons; Rehm & Co.; H. Channon Co.; Chicago Flag & Decorating Co.; M. G. Copeland Co.; John C. Dettra & Co.; Emerson Manufacturing Co.; Wm. H. Horstmann Co.; National Flag Co.; R. J. Patton Co.; U. S. Flag Co.; J. E. Scott Co.; Sigbee & Co.; Collegeville Flag Co.; American Flag Manufacturing Co.; and H. O. Stansbury & Co., all of whom are herein-after referred to as respondents, have been, and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect as follows:

1. That all of the said respondents, except the Association of Flag Manufacturers of America, American Flag Manufacturing Co., Collegeville Flag Co., Rehm & Co., U. S. Flag Co., and Harold M. Turner, chairman of the Association of

Flag Manufacturers of America, are corporations organized and existing, under and by virtue of the laws of their respective States, and having their principal offices and places of business as hereinafter designated:

Name.	Organized under the laws of—	Principal office at—
American Flag Co.....	New York.....	New York City.
Annin & Co.....	do.....	Do.
Degrauw, Aymar & Co.....	do.....	Do.
C. D. Durkee & Co.....	do.....	Do.
Andrew Mills & Sons.....	do.....	Do.
H. Channon Co.....	Illinois.....	Chicago, Ill.
Chicago Flag & Decorating Co.....	do.....	Do.
M. G. Copeland Co.....	District of Columbia.	Washington, D. C.
John C. Dettra & Co.....	Pennsylvania.....	Oaks, Pa.
Emerson Manufacturing Co.....	California.....	San Francisco.
Wm. H. Horstmann Co.....	Pennsylvania.....	Philadelphia.
National Flag Co.....	Ohio.....	Cincinnati, Ohio.
R. J. Patton Co.....	do.....	Do.
J. F. Scott Co.....	Michigan.....	Detroit, Mich.
Sigbee & Co.....	Massachusetts.....	Ayer, Mass.
H. O. Stansbury & Co.....	Pennsylvania.....	Philadelphia, Pa.

That the Association of Flag Manufacturers of America is an unincorporated association composed of the various respondent concerns, partnerships, and corporations named, and has its principal office at 62 Leonard Street, New York City.

That Harold M. Turner is chairman of the Association of Flag Manufacturers of America, and has his principal office at 62 Leonard Street, New York City.

That the remaining respondents are described as follows:

American Flag Manufacturing Co. is a private concern, owned by W. J. Heller, doing business under the name and style of American Flag Manufacturing Co., Easton, Pa.

Collegeville Flag Co. is a private concern, owned by S. D. Cornish, doing business under the name and style of Collegeville Flag Co., Collegeville, Pa.

Rehm & Co. is a partnership, composed of Carl Rehm and Geo. E. Koch, doing business under the firm name and style of Rehm & Co., New York City.

U. S. Flag Co. is a partnership, composed of A. J. Buerger and Jos. Knecht, doing business under the name U. S. Flag Co., Cincinnati, Ohio.

2. That the several respondent concerns are now, and were at all times hereinafter mentioned, engaged generally and

extensively in manufacturing and selling American flags in commerce among the several States and Territories of the United States.

3. That the respondents, members and ex-members of the Association of Flag Manufacturers, manufacture and sell by far the greater portion of the entire output of American flags made and sold within the United States. That the said industry represents an aggregate business of approximately two and one-half million dollars sales annually.

4. That the respondents, either as individuals or as members of said association, have for more than three years last past, both individually and as members of said association, been and now are engaged in a concerted movement to unduly enhance the prices of American flags and to maintain such enhanced prices, and to bring about a general uniformity of such prices. Such enhancement and general uniformity has been effected by meetings, correspondence, and other means of intercommunication between respondents, members and ex-members of said association, among themselves, and between such respondents and the said association and its chairman, Harold M. Turner.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

It appearing from the complaint and answers on file that the respondent Association of Flag Manufacturers of America was a voluntary association composed of the several commercial respondents, and that the respondent Harold M. Turner acted as chairman, and it appearing further that such association has ceased its activities; therefore, the Commission finds as a fact that the Association of Flag Manufacturers of America has ceased to exist and it is dissolved:

Wherefore, the cause of complaint as to said respondent is abated.

#### ORDER TO CEASE AND DESIST.

*It is hereby ordered* by the Federal Trade Commission—

That each and all of the respondents signatory hereto, to wit, American Flag Co., Annin & Co., Degrauw, Aymar &

Co., C. D. Durkee & Co., Andrew Mills & Sons, Rehm & Co., H. Channon Company, Chicago Flag & Decorating Co., M. G. Copeland Co., John C. Dettra & Co., Emerson Manufacturing Co., Wm. H. Horstmann Co., U. S. Flag Co., J. E. Scott Co., Sigsbee & Co., Collegeville Flag Co., American Flag Manufacturing Co., and H. O. Stansbury & Co., shall forever cease and desist from continuing their respective memberships in the said Association of Flag Manufacturers of America or from reorganizing said association or from creating or joining or becoming member of any such association or similar organization having for its purpose the objects or any of them charged in the complaint in this case as having been the objects of the said Association of Flag Manufacturers of America, or carrying on such activities as are charged in the complaint to have been carried on by the said Association of Flag Manufacturers of America, and shall not engage in any concerted movement (a) to enhance prices of American flags, or (b) to maintain such enhanced prices, or (c) to bring about a general uniformity of such prices, and (d) from effecting or maintaining such enhancements or such uniformity of prices through the medium of telephonic communication or telegraphic communication or by correspondence or by personal meetings or through other communications or in any other manner whatsoever.

And it appearing that the respondent Harold M. Turner is not a flag manufacturer, and that his connection with said Association of Flag Manufacturers of America was as chairman thereof, and substantially under the circumstances as set forth in his answer herein:

*It is, therefore, further ordered* that said respondent Harold M. Turner be, and he hereby is, ordered to forever cease and desist from any connection with said Association of Flag Manufacturers of America or from creating, managing, conducting, working for or becoming connected in any capacity with any other association or similar organization having for its purpose the objects charged in the complaint as having been the objects of the said Association of Flag Manufacturers of America or any similar objects, or from being connected with or assisting in any acts of a similar nature or having identical or similar objects.



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quests for estimates of the kind, quantity, and prices of lumber and building materials, and for catalogues, printed matter, and special information intended only for bona fide customers and bona fide prospective customers;

- (b) urged, encouraged, and suggested, through the medium of said periodical, the circulation of information calculated to cause dealers in lumber and building materials to use their influence with banks, credit-reporting agencies, and others, to induce them to delay in making reports, to fail in reporting, or to make misleading reports;
- (c) induced and endeavored to induce manufacturers and wholesalers of lumber and building materials to refrain from and to discontinue furnishing supplies of lumber and building materials to mail-order concerns dealing in the same, by means of actual and implied threats that retail dealers should withdraw their patronage; and
- (d) sought to obtain, and obtained, confidential information from mail-order concerns dealing in lumber and building materials, relative to their source of supply, financial condition, internal affairs, and business secrets for the use and benefit of retail dealers in lumber and building materials:

*Held*, That such acts constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Botsford Lumber Co., Winona, Minn.; Hayes-Lucas Lumber Co., Winona, Minn.; C. M. Youmans Lumber Co., Winona, Minn.; Wilcox Lumber Co., Detroit, Minn.; Hubbard & Palmer Lumber Co., Garden City, Minn.; Mora Lumber Co., Mora, Minn.; Rudd Lumber Co., Milaca, Minn.; Koenig & Lampert Lumber Co., Lamberton, Minn.; J. Borgerding & Co., Melrose, Minn.; Dower Lumber Co., Wadena, Minn.; Stenerson Bros. Lumber Co., Felton, Minn.; Johnson & Larson Lumber Co., Atwater, Minn.; Morrison County Lumber Co., Little Falls, Minn.; Nortz Lumber Co., Breckenridge, Minn.; Kensington Hardware & Lumber Co., Kensington, Minn.; International Lumber Co., International Falls, Minn.; Lowry Lumber Co., Lowry, Minn.; Frank Underwood, Eyota, Minn.; Anton Roseth, Boyd, Minn.; Standard Lumber Co., Winona, Minn.; St. Anthony & Dakota Elevator Co., Minneapolis, Minn.; Atlas Lumber Co., Minneapolis, Minn.; J. H. Queal & Co., Minneapolis, Minn.; Langworthy Lumber Co., Minneapolis, Minn.; Bertram-

Wright Lumber Co., Minneapolis, Minn.; Bovey-Shute Lumber Co., Minneapolis, Minn.; S. H. Bowman Lumber Co., Minneapolis, Minn.; L. P. Dolliff & Co., Minneapolis, Minn.; Fullerton Lumber Co., Minneapolis, Minn.; Imperial Elevator Co., Minneapolis, Minn.; Mandan Mercantile Co., Minneapolis, Minn.; Midland Lumber Co., Minneapolis, Minn.; Rogers Lumber Co., Minneapolis, Minn.; H. W. Ross Lumber Co., Minneapolis, Minn.; Superior Lumber & Coal Co., Minneapolis, Minn.; Winnor-Torgersen Lumber Co., Minneapolis, Minn.; Interior Lumber Co., Minneapolis, Minn.; Lampert Lumber Co., Minneapolis, Minn.; Salzer Lumber Co., Minneapolis, Minn.; John W. Tuthill Lumber Co., Minneapolis, Minn.; Powers Elevator Co., Minneapolis, Minn.; Libby Lumber Co., Minneapolis, Minn.; Midland Lumber & Coal Co., Minneapolis, Minn.; Central Lumber Co., Minneapolis, Minn.; F. A. Bartlett & Co., Farmingdale, S. Dak.; A. F. Clough & Co., Canova, S. Dak.; C. W. Derr, Mitchell, S. Dak.; Hamilton Lumber Co., Britton, S. Dak.; Bartlett & Co., Edgemont, S. Dak.; J. J. Stehly, Hecla, S. Dak.; C. A. Finch Lumber Co., La Moure, N. Dak.; Bond Lumber Co., Minot, N. Dak.; Piper-Howe Lumber Co., Minot, N. Dak.; Crane-Johnson Lumber Co., Cooperstown, N. Dak.; Dunham Lumber Co., Bismarck, N. Dak.; Valley Lumber Co., Hillsboro, N. Dak.; Washburn-Merrick Lumber Co., Bismarck, N. Dak.; Robertson Lumber Co., Grand Forks, N. Dak.; Jones Lumber & Implement Co., Lisbon, N. Dak.; Wisconsin Lumber Co., Des Moines, Iowa; Central Lumber & Coal Co., Dubuque, Iowa; Biddick-Holman Lumber Co., Collins, Iowa; W. J. Dixon Lumber Co., Sac City, Iowa; Eclipse Lumber Co., Clinton, Iowa; Joyce Lumber Co., Clinton, Iowa; Floete Lumber Co., Spencer, Iowa; Schoeneman Bros. Co., Hawarden, Iowa; M. M. Slagle & Co., Alton, Iowa; Jas. A. Smith Lumber Co., Osage, Iowa; Smith-Hovelson Lumber Co., Sioux City, Iowa; F. I. Gardner & Co., Cherokee, Iowa; C. A. Grant & Son, Rolfe, Iowa; Jasper Lumber Co., Newton, Iowa; P. Schertz & Co., Gibson City, Ill.; Alexander Lumber Co., Chicago, Ill.; Chicago Lumber & Coal Co., East St. Louis, Ill.; Miner & Frees, Ridgeway, Mo.; Leidigh & Havens Lumber Co., Kansas City, Mo.; Noll Welty Lumber Co., Kansas City, Mo.; Chicago

Lumber Co. of Omaha, Omaha, Nebr.; F. H. Gilchrest Lumber Co., Kearney, Nebr.; W. L. Stickel Lumber Co., Kearney, Nebr.; Nye-Schneider-Fowler Co., Fremont, Nebr.; Walrath & Sherwood Lumber Co., Omaha, Nebr.; Welpton Lumber Co., Ogallala, Nebr.; L. W. Cox & Co., McCook, Nebr.; Dierks Lumber & Coal Co., Lincoln, Nebr.; J. A. Gardner & Co., Orleans, Nebr.; Albert Caughey, Deshler, Nebr.; S. W. Lightner, St. Edward, Nebr.; Pawnee Lumber Co., Pawnee City, Nebr.; H. Petersen & Sons, Dannenbrog, Nebr.; Seward Lumber & Fuel Co., Seward, Nebr.; Westrup & Kohler Lumber Co., Woodbine, Kans.; Humburg Lumber Co., Bison, Kans.; G. E. Miller & Son, Stroh, Ind.; E. A. Chapman & Bros., South Wayne, Wis.; Wm. Dukelow, Wilton, Wis.; C. L. Colman Lumber Co., La Crosse, Wis.; John D. Young Co., La Crosse, Wis.; Deacon Lumber Co., Le Moore, Calif.; Santa Barbara Lumber Co., Santa Barbara, Calif.; Potlatch Lumber Co., Potlatch, Idaho; Standard Lumber Co., Moscow, Idaho; F. R. Woodbury Lumber Co., Spokane, Wash.; Lamb Davis Lumber Co., Leavenworth, Wash.; Reliance Lumber & Timber Co., Seattle, Wash.; J. C. Starkey, Pine City, Wash.; Goodridge Call Lumber Co., Great Falls, Mont.; A. W. Miles Lumber & Coal Co., Livingston, Mont.; H. M. Allen & Co., Billings, Mont.; Gibson-Faw Lumber & Mercantile Co., Colona, Colo.; B. S. Lewis, Nashville, Tenn.; Mayhew & Isbell Lumber Co., Uvalde, Tex.; Pioneer Lumber Co., Sheridan, Wyo.; Lumberman Publishing Co., Minneapolis, Minn.; Platt B. Walker, Minneapolis, Minn.; and Luke W. Boyce, Minneapolis, Minn., hereinafter referred to as respondents, have been, and are, using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be in the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That all of the respondents, except those specifically named in the next succeeding two paragraphs, are now, and for several years last past have been, engaged

[illegible]

ployees, and the respondent Platt B. Walker, residing at Minneapolis, State of Minnesota, is the manager of said Lumberman Publishing Co. and the editor of the said Mississippi Valley Lumberman, and the said respondent, Platt B. Walker and the Lumberman Publishing Co., hold out said periodical to be the official organ and representative of said regular dealers in the various States where they are located and do business, and said regular dealers receive and accept such trade journal as their official organ and representative.

PAR. 3. That the respondent, Luke W. Boyce, residing at Minneapolis, Minn., is a detective, doing business under the trade name and style of "Northern Information Bureau," which bureau is conducted and operated by the said Luke W. Boyce under a plan or system of subscription contracts, whereby subscribers are entitled to the services of said bureau, its agents and detectives, at cost, in securing information desired by said subscribers, among whom are the respondent Platt B. Walker and many of the respondent regular dealers.

PAR. 4. That a branch or form of retail lumber trade in the United States is carried on by so-called "mail-order houses," which sell, generally through the medium of mail orders, lumber and building materials, in interstate commerce, direct to the consumer in nearly all of the States of the United States; that such mail-order houses are either manufacturers of lumber or commercial establishments, located in many cities of the United States; that said commercial establishments generally purchase their supplies of lumber and lumber products from the manufacturer and wholesale dealer without the intervention of the retail dealer, and that said mail-order houses are engaged in competition with such of said respondents who conduct retail lumber yards for the sale at retail of lumber and building materials.

PAR. 5. That all of the respondents are, and for more than two years last past have been, wrongfully and unlawfully engaged in a combination or conspiracy, entered into, carried out, and continued by said respondents with the intent, purpose, and effect of discouraging, stifling, and suppressing competition in interstate commerce in the retail lumber and



Platt B. Walker, does publish in said trade journal a large amount of the information thus obtained, and thereby, and by other means, the said respondent regular dealers acquaint the said respondent, Platt B. Walker, and each other, of their activities and participation in such scheme of making such bogus and spurious requests of said mail-order houses, and thus encourage the continued participation in such scheme on the part of the respondents, and thereby cause an increase in the amount of such correspondence with mail-order houses.

(b) That the respondents, who are regular dealers, largely through the urging, encouragement and suggestion of the respondent, Platt B. Walker, by published articles in the *Mississippi Valley Lumberman* and otherwise, and acting thereon and pursuant to such conspiracy, systematically urge, and use their influence with banks, credit-reporting agencies, and others who are called upon by said mail-order houses to make reports as to the identity and occupation of the persons from whom they receive such bogus and spurious requests, to fail to make such reports or to make misleading reports thereon, with the result that such mail-order houses do not, in many cases, receive such reports or receive misleading reports in reference thereto.

(c) That said respondents have endeavored to induce, and in some instances have induced, manufacturers to refrain from and to discontinue furnishing supplies of lumber and building material to some of said mail-order houses, and the said respondents, who are regular dealers, acting with said respondents, Platt B. Walker and Luke W. Boyce, and pursuant to such conspiracy, have, by threats of withdrawal or actual withdrawal of patronage, compelled certain manufacturers to discontinue selling to mail-order houses, and by the well-known attitude of intolerant hostility of said regular dealers toward the competition of mail-order houses, have deterred, and do deter, manufacturers from selling supplies to such mail-order houses, the same being accomplished (1) by means of information surreptitiously obtained by the respondent, Luke W. Boyce, as to the names and methods of manufacturers selling to mail-order houses and communi-



cated by said respondent, Luke W. Boyce, to said respondent, Platt B. Walker; (2) by means of correspondence carried on by said respondent, Platt B. Walker, with such manufacturers; (3) by the publication in the Mississippi Valley Lumberman by said respondent, Platt B. Walker, of the names of manufacturers who supply mail-order houses; (4) by publication in said trade journal by said respondent, Platt B. Walker, of articles containing direct or implied threats that the regular dealers will withdraw their patronage from such manufacturers if they sell to the mail-order houses; (5) by articles published in said trade journal by the respondent, Platt B. Walker, advising the regular dealers to withdraw their patronage from such manufacturers; and (6) by publication in said trade journal by the respondent, Platt B. Walker, of a false report to the effect that an investigation had been instituted by detectives of the Northern Information Bureau; conducted by the respondent, Luke W. Boyce, to ascertain the names of all manufacturers selling to mail-order houses.

(d) That the respondents, Platt B. Walker and Luke W. Boyce, have surreptitiously sought and obtained from employees of mail-order houses confidential information as to the business of mail-order houses, and in particular in reference to their source of supplies, financial condition, internal affairs, and business secrets, and said respondent, Platt B. Walker, has published much of such information so obtained in the Mississippi Valley Lumberman, together with numerous false and disparaging statements concerning the business methods, financial condition, and internal affairs of such mail-order houses, for the use and benefit of the regular dealers in their competition with mail-order houses, and such information so published is used by such regular dealers in their competition with mail-order houses.

(e) That some of the respondents, or their employees, acting with the respondent, Luke W. Boyce, or his agents or employees, have followed and trailed salesmen of mail-order houses from place to place with the object and effect of hindering and embarrassing such salesmen in the making of sales and in the transaction of their business.

## II.

And the Federal Trade Commission, further stating separate and distinct charges in respect to the violation of said section 5 on the part of the above-named respondents, on information and belief alleges:

PAR. 8. That with the effect of stifling and suppressing competition in interstate commerce in the retail lumber and building material trade in the United States on the part of said mail-order houses, and to force the ultimate consumer to buy his required supply of lumber and building materials from the regular and recognized retail merchants operating retail yards where such lumber or building materials are used, and who conduct and carry on their business after the manner of the respondent regular dealers, all of said respondent regular dealers, systematically and on a large scale, write and send, and cause to be written and sent, and procure others to write and send, to said mail-order houses, letters containing requests for statements of estimates of the quantity and quality of lumber or building material for certain building purposes, and the prices therefor, and also containing requests for the printed matter, advertisements, and other special information furnished bona fide customers and prospective customers by such mail-order houses; that the writers and senders of such letters have no purpose or intention of buying any lumber or building material from such mail-order houses, but write and send such letters to cause such mail-order houses annoyance and delay in the transaction of their business and damage and expense, and for the purpose, among other things, of furnishing the information thus secured to the respondent, Platt B. Walker, for publication in the Mississippi Valley Lumberman.

PAR. 9. That for the purpose of stifling and suppressing competition in interstate commerce in the retail lumber and building material trade in the United States on the part of the mail-order houses, the said respondents, who are regular dealers, systematically and on a large scale, urge upon, and use their influence with banks, credit reporting agencies, and others, who are called upon by said mail-order houses to make reports as to the identity and occupation of the persons from whom they receive such bogus and spurious requests,

to fail to make such reports, or make misleading reports thereon, with the result that such mail-order houses do not, in many cases, receive such reports, or receive misleading reports in reference thereto.

PAR. 10. That for the purpose of stifling and suppressing competition in interstate commerce in the retail lumber and building material trade in the United States on the part of said mail-order houses, the said respondents, who are regular dealers, have endeavored to induce, and in many instances have induced, manufacturers to refrain from, and to discontinue, furnishing supplies of lumber and building material to some of said mail-order houses by threats of withdrawal or actual withdrawal of patronage from such manufacturers.

PAR. 11. That said respondents, who are regular dealers, have followed and trailed salesmen of mail-order houses with the object and effect of hindering and embarrassing such salesmen in the making of sales and the transaction of their business.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDERS.

#### ORDER TO CEASE AND DESIST.

*It is hereby ordered* by the Federal Trade Commission that each of the following named respondents in the above entitled proceeding, signatories of a certain stipulation confirmed and approved by the Federal Trade Commission on February 6, 1918, to wit:

A. W. Miles Lumber & Coal Co., Bartlett & Co., Lowry Lumber Co., Kensington Hardware & Lumber Co., Libby Lumber Co., Luke W. Boyce, H. M. Allen & Co., Alexander Lumber Co., F. A. Bartlett & Co., Bertram-Wright Lumber Co., Biddick-Holman Lumber Co., J. Borgerding & Co., Botsford Lumber Co., Bond Lumber Co., S. H. Bowman Lumber Co., Bovey-Shute Lumber Co., Central Lumber & Coal Co., A. F. Clough & Co., Crane-Johnson Lumber Co., Chicago Lumber Co. of Omaha, Albert Caughey, E. A. Chapman & Bro., C. L. Colman Lumber Co., L. W. Cox & Co., Dower Lumber Co., L. P. Dolliff & Co., C. W. Derr, W. J. Dixon Lumber Co., William Dukelow, Deacon Lumber Co., Eclipse Lumber Co., Fullerton Lumber Co., C. A. Finch Lumber Co., Floete Lumber Co., F. I. Gardner

& Co., C. A. Grant & Son, F. H. Gilcrest Lumber Co., Gibson-Faw Lumber & Mercantile Co., Hayes-Lucas Lumber Co., Hubbard & Palmer Lumber Co., Humburg Lumber Co., Hamilton Lumber Co., Joyce Lumber Co., Jasper Lumber Co., Jones Lumber & Implement Co., Johnson & Larson Lumber Co., Koenig & Lampert Lumber Co., Lampert Lumber Co., B. S. Lewis, Lamb-Davis Lumber Co., Langworthy Lumber Co., Leidigh & Havens Lumber Co., Mora Lumber Co., Morrison County Lumber Co., Mandan Mercantile Co., Midland Lumber Co., Midland Lumber & Coal Co., G. E. Miller & Son, Miner & Frees, Nortz Lumber Co., Piper-Howe Lumber Co., H. Petersen & Sons, Pawnee Lumber Co., Pioneer Lumber Co., Anton Roseth, H. W. Ross Lumber Co., Rudd Lumber Co., Salzer Lumber Co., Standard Lumber Co. (Winona, Minn.), Standard Lumber Co. (Moscow, Idaho), Stenerson Bros. Lumber Co., J. J. Stehly, Schoeneman Bros. Co., F. M. Slagle & Co., Chicago Lumber & Coal Co., Smith-Hovelson Lumber Co., W. L. Stickel Lumber Co., John W. Tuthill Lumber Co., Frank Underwood, Valley Lumber Co., Wilcox Lumber Co., Winnor-Torgerson Lumber Co., Wisconsin Lumber Co., Welpton Lumber Co., Westrup & Kohler Lumber Co., F. R. Woodbury Lumber Co., C. M. Youmans Lumber Co., John D. Young Co., Potlatch Lumber Co., Imperial Lumber Co., Noll-Welty Lumber Co., Dunham Lumber Co., Dierks Lumber & Coal Co., J. A. Gardner & Co., forever cease and desist from—

(a) Systematically or on a large scale or in bad faith or by subterfuge writing and sending, causing to be written and sent, or procuring others who are not bona fide customers or bona fide prospective customers of mail-order concerns, to write and send to mail-order concerns requests for estimates of the kind, quantity, and prices of lumber and building material for certain building purposes and for catalogues, printed matter, and special information intended only for bona fide customers and bona fide prospective customers: *Provided*, that nothing herein contained shall be taken to prohibit such requests where disclosure is made by the parties making them of their connection with or their acting for respondent so-called regular dealers.

(b) Furnishing to Platt B. Walker information calculated, or having a tendency, if published or otherwise circulated, to encourage the so-called regular dealers in making or causing to be made of mail-order concerns requests for estimates of the kind, quantity, and prices of lumber and building material for certain building purposes and for catalogues, printed matter, and special information intended for bona fide customers and bona fide prospective customers.

(c) Using their influence with banks and others who are called upon by mail-order concerns to report the identity and occupation of persons suspected of making requests for information not in good faith, to fail to make such reports or to make misleading reports.

(d) Inducing or endeavoring to induce, by means of an actual or threatened withdrawal of patronage, manufacturers and wholesalers to refrain from or to discontinue furnishing supplies of lumber and building material to mail-order concerns.

(e) Furnishing to Platt B. Walker the names of manufacturers and wholesalers which sell to mail-order concerns for the purpose of enabling him to interfere with the free purchase of supplies by mail-order concerns.

(f) Employing or contributing to the employment of Luke W. Boyce to secure confidential information regarding the business secrets of mail-order concerns and the movements of their salesmen.

(g) Systematically following or causing to be followed the salesmen of mail-order concerns from place to place with the object or effect of hindering and embarrassing such salesmen in their negotiations with prospective customers in the making of sales.

(h) Employing or using Platt B. Walker, the Mississippi Valley Lumberman, Luke W. Boyce, or any similar agency or agencies for any of the purposes in this order prohibited.

POWERS ELEVATOR CO.—ORDER TO CEASE AND DESIST.

*It is hereby ordered* by the Federal Trade Commission that the Powers Elevator Co., one of the respondents in the above-entitled proceeding, signatory of a certain stipulation con-

firmed and approved by the Federal Trade Commission on February 6, 1918, forever cease and desist from—

(a) Systematically or on a large scale or in bad faith or by subterfuge writing and sending, causing to be written and sent, or procuring others who are not bona fide customers or bona fide prospective customers of mail-order concerns, to write and send to mail-order concerns, requests for estimates of the kind, quantity, and prices of lumber and building material for certain building purposes and for catalogues, printed matter, and special information intended only for bona fide customers and bona fide prospective customers; provided, that nothing herein contained shall be taken to prohibit such requests where disclosure is made by the parties making them of their connection with or their acting for respondent.

(b) Furnishing to Platt B. Walker information calculated, or having a tendency, if published or otherwise circulated, to encourage the so-called regular dealers in making or causing to be made of mail-order concerns requests for estimates of the kind, quantity, and prices of lumber and building material for certain building purposes and for catalogues, printed matter, and special information intended for bona fide customers and bona fide prospective customers.

(c) Using its influence with banks and others who are called upon by mail-order concerns to report the identity and occupation of persons suspected of making requests for information not in good faith, to fail to make such reports or to make misleading reports.

(d) Inducing or endeavoring to induce, by means of an actual or threatened withdrawal of patronage, manufacturers and wholesalers to refrain from or to discontinue furnishing supplies of lumber and building material to mail-order concerns.

(e) Furnishing to Platt B. Walker the names of manufacturers and wholesalers which sell to mail-order concerns for the purpose of enabling him to interfere with the free purchase of supplies by mail-order concerns.

(f) Employing or contributing to the employment of Luke W. Boyce to secure confidential information regarding the business secrets of mail-order concerns and the movements of their salesmen.

(g) Systematically following or causing to be followed the salesmen of mail-order concerns from place to place with the object or effect of hindering and embarrassing such salesmen in their negotiations with prospective customers in the making of sales.

(h) Employing or using Platt B. Walker, the Mississippi Valley Lumberman, Luke W. Boyce, or any similar agency or agencies for any of the purposes in this order prohibited.

**MAYHEW & ISBELL LUMBER CO.—ORDER TO CEASE AND DESIST.**

*It is hereby ordered* by the Federal Trade Commission that the Mayhew & Isbell Lumber Co., one of the respondents in the above entitled proceeding, signatory of a certain stipulation confirmed and approved by the Federal Trade Commission on February 6, 1918, forever cease and desist from—

Systematically or on a large scale or in bad faith or by subterfuge writing and sending, causing to be written and sent, or procuring others who are not bona fide customers or bona fide prospective customers of mail-order concerns, to write and send to mail-order concerns, requests for estimates of the kind, quantity, and prices of lumber and building material for certain building purposes and for catalogs, printed matter, and special information intended only for bona fide customers and bona fide prospective customers: *Provided*, That nothing herein contained shall be taken to prohibit such requests where disclosure is made by the parties making them of their connection with or their action for respondent.

**ROBERTSON LUMBER CO.—ORDER TO CEASE AND DESIST.**

*It is hereby ordered* by the Federal Trade Commission that the Robertson Lumber Co., one of the respondents in the above entitled proceeding, signatory of a certain stipulation confirmed and approved by the Federal Trade Commission on February 6, 1918, forever cease and desist from—

Systematically or on a large scale or in bad faith or by subterfuge writing and sending, causing to be written and sent, or procuring others who are not bona fide customers or

bona fide prospective customers for mail-order concerns, to write and send to mail-order concerns, requests for estimates of the kind, quantity, and prices of lumber and building material for certain building purposes and for catalogs, printed matter, and special information intended only for bona fide customers and bona fide prospective customers: *Provided*, That nothing herein contained shall be taken to prohibit such requests where disclosure is made by the parties making them of their connection with or their acting for respondent.

INTERIOR LUMBER CO.—ORDER TO CEASE AND DESIST.

*It is hereby ordered* by the Federal Trade Commission that the Interior Lumber Co., one of the respondents in the above-entitled proceeding, signatory to a certain stipulation made and entered into by and between it and W. T. Chantland and W. B. Wooden, trial counsel for the Federal Trade Commission, at the city of Washington, D. C., on the 22d day of March, A. D. 1918, wherein said respondent agrees and consents that the Commission shall make and enter an order upon such stipulation, forever cease and desist from—

Systematically or on a large scale or in bad faith or by subterfuge writing and sending, causing to be written and sent, or procuring others who are not bona fide customers or bona fide prospective customers of mail-order concerns, to write and send to mail-order concerns, requests for estimates of the kind, quantity, and prices of lumber and building material for certain building purposes and for catalogues, printed matter, and special information intended only for bona fide customers and bona fide prospective customers; *Provided*, that nothing herein contained shall be taken to prohibit such requests where disclosure is made by the parties making them of their connection with or their acting for respondent.

P. SCHERTZ & CO.—ORDER TO CEASE AND DESIST.

*It is hereby ordered* by the Federal Trade Commission that P. Schertz & Co., one of the respondents in the above-entitled proceeding, signatory to a certain stipulation made and entered into by and between such respondent and Walter B.



Wooden, counsel for the Federal Trade Commission, at Gibson City, State of Illinois, on the 16th day of September, A. D. 1918, wherein it is agreed that the Commission shall take certain facts as the facts in the case, forever cease and desist from—

Systematically or on a large scale or in bad faith or by subterfuge writing and sending, causing to be written and sent, or procuring others who are not bona fide customers or bona fide prospective customers of mail-order concerns, to write and send to mail-order concerns, requests for estimates of the kind, quantity, and prices of lumber and building material for certain building purposes and for catalogues, printed matter, and special information intended only for bona fide customers and bona fide prospective customers: *Provided*, that nothing herein contained shall be taken to prohibit such requests where disclosure is made by the parties making them of their connection with or their acting for respondent.

ROGERS LUMBER CO.—ORDER TO CEASE AND DESIST.

*It is hereby ordered* by the Federal Trade Commission that the Rogers Lumber Co., one of the respondents in the above-entitled proceeding, signatory to a certain answer made and filed by it herein on the 11th day of July, A. D. 1917, admitting certain of the allegations as alleged and set forth in the complaint and denying others therein contained, forever cease and desist from—

Systematically or on a large scale or in bad faith or by subterfuge writing and sending, causing to be written and sent, or procuring others who are not bona fide customers or bona fide prospective customers of mail-order concerns, to write and send to mail-order concerns requests for estimates of the kind, quantity, and prices of lumber and building material for certain building purposes and for catalogues, printed matter, and special information intended only for bona fide customers and bona fide prospective customers; *Provided*, that nothing herein contained shall be taken to prohibit such requests where disclosure is made by the parties making them of their connection with or their acting for respondent.

## ATLAS LUMBER CO.—ORDER TO CEASE AND DESIST.

*It is hereby ordered* by the Federal Trade Commission that the Atlas Lumber Co., one of the respondents in the above-entitled proceeding, signatory to a certain stipulation made and entered into by and between such respondent and Walter B. Wooden, counsel for the Federal Trade Commission, at Minneapolis, State of Minnesota, on the 22d day of August, A. D. 1918, wherein it is agreed that the Commission shall take certain facts as the facts in this case, forever cease and desist from—

Systematically or on a large scale or in bad faith or by subterfuge writing and sending, causing to be written and sent, or procuring others who are not bona fide customers or bona fide prospective customers of mail-order concerns, to write and send to mail-order concerns requests for estimates of the kind, quantity, and prices of lumber and building material for certain building purposes and for catalogues, printed matter, and special information intended only for bona fide customers and bona fide prospective customers; *Provided* that nothing herein contained shall be taken to prohibit such requests where disclosure is made by the parties making them of their connection with, or their acting for, respondent.

## CENTRAL LUMBER CO.—ORDER TO CEASE AND DESIST.

*It is hereby ordered* by the Federal Trade Commission that the Central Lumber Co., one of the respondents in the above-entitled proceeding, signatory to a certain stipulation made and entered into by and between such respondent and Walter B. Wooden, counsel for the Federal Trade Commission, at Minneapolis, State of Minnesota, on the 26th day of August, A. D. 1918, wherein it is agreed that the Commission shall take certain facts as the facts in this case, forever cease and desist from—

Systematically or on a large scale or in bad faith or by subterfuge writing and sending, causing to be written and sent, or procuring others who are not bona fide customers or bona fide prospective customers of mail-order concerns, to write and send to mail-order concerns, requests for estimates of the

kind, quantity, and prices of lumber and building material for certain building purposes and for catalogues, printed matter, and special information intended only for bona fide customers and bona fide prospective customers: *Provided*, That nothing herein contained shall be taken to prohibit such requests where disclosure is made by the parties making them of their connection with or their acting for respondent.

S. W. LIGHTNER—ORDER TO CEASE AND DESIST.

*It is hereby ordered* by the Federal Trade Commission that S. W. Lightner, one of the respondents in the above-entitled proceeding, signatory to a certain stipulation made and entered into by and between such respondent and Walter B. Wooden, counsel for the Federal Trade Commission, at St. Edward, State of Nebraska, on the 17th day of September, A. D. 1918, wherein it is agreed that the Commission shall take certain facts as the facts in this case, forever cease and desist from—

Systematically or on a large scale or in bad faith or by subterfuge writing and sending, causing to be written and sent, or procuring others who are not bona fide customers or bona fide prospective customers of mail-order concerns, to write and send to mail-order concerns, requests for estimates of the kind, quantity, and prices of lumber and building material for certain building purposes and for catalogues, printed matter, and special information intended only for bona fide customers and bona fide prospective customers: *Provided*, That nothing herein contained shall be taken to prohibit such requests where disclosure is made by the parties making them of their connection with or their acting for respondent.

GOODRIDGE-CALL LUMBER CO.—ORDER TO CEASE AND DESIST.

*It is hereby ordered* by the Federal Trade Commission that the Goodridge-Call Lumber Co., one of the respondents in the above-entitled proceeding, signatory to a certain answer made and filed by it herein on the 11th day of July, A. D. 1917, admitting certain of the allegations as alleged

and set forth in the complaint and denying others therein contained, forever cease and desist from—

Systematically or on a large scale or in bad faith or by subterfuge writing and sending, causing to be written and sent, or procuring others who are not bona fide customers or bona fide prospective customers of mail-order concerns, to write and send to mail-order concerns, requests for estimates of the kind, quantity, and prices of lumber and building material for certain building purposes and for catalogues, printed matter, and special information intended only for bona fide customers and bona fide prospective customers: *Provided*, That nothing herein contained shall be taken to prohibit such requests where disclosure is made by the parties making them of their connection with or their acting for respondent.

SAINT ANTHONY & DAKOTA ELEVATOR CO.—ORDER TO CEASE AND DESIST.

*It is hereby ordered* by the Federal Trade Commission that the Saint Anthony & Dakota Elevator Co., one of the respondents in the above-entitled proceeding, signatory to a certain stipulation made and entered into by and between such respondent and Walter B. Wooden, counsel for the Federal Trade Commission, at Minneapolis, State of Minnesota, on the 19th day of August, A. D. 1918, wherein it is agreed that the Commission shall take certain facts as the facts in this case, forever cease and desist from—

Systematically or on a large scale or in bad faith or by subterfuge writing and sending, causing to be written and sent, or procuring others who are not bona fide customers or bona fide prospective customers of mail-order concerns, to write and send to mail-order concerns, requests for estimates of the kind, quantity, and prices of lumber and building material for certain building purposes and for catalogues, printed matter, and special information intended only for bona fide customers and bona fide prospective customers: *Provided*, That nothing herein contained shall be taken to prohibit such requests where disclosure is made by the parties making them of their connection with or their acting for respondent.

PLATT B. WALKER AND LUMBERMAN PUBLISHING CO.—REPORT,  
FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the said above named respondents, Platt B. Walker and Lumberman Publishing Co. have been and are using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and further stating its charges in that respect, and said respondents having made and filed their answers to the said complaint and having further entered into, agreed to, and signed an agreement and stipulation as to the facts, and on the 4th day of January, A. D. 1918, its cause having come on for hearing before the Commission and having been argued by William T. Chantland, trial counsel for the Commission, and Stanley B. Houck, counsel of record for said respondents, and on said day was submitted to, and taken under advisement by, the Commission; now on this 26th day of March, A. D. 1918, on this said complaint, answers, agreement and stipulation and argument, the Commission makes its report and findings as to facts.

FINDINGS AS TO THE FACTS.

*The commission finds:*

1. That the said respondent, the Lumberman Publishing Co., is a corporation organized under and by virtue of the laws of the State of Minnesota, having its principal office and place of business at the city of Minneapolis, in the said State of Minnesota, and is, and for many years has been, the owner and publisher of a periodical or lumber trade journal known as the Mississippi Valley Lumberman, published at the said city of Minneapolis, in the said State of Minnesota, and generally circulated throughout the Middle Western States and received and read by lumber dealers therein, including some of the retail dealers in lumber and building materials, re-

spondents, and their agents and employees; and the said respondent, Platt B. Walker, residing at Minneapolis, State of Minnesota, is now, and for many years has been, the manager of said Lumberman Publishing Co. and the editor of the said Mississippi Valley Lumberman, and the said respondents, Platt B. Walker, and the Lumberman Publishing Co., have for many years last past and do now hold out said periodical to be the official organ and representative of the retail dealers in lumber and building supplies in the various States where they are located and do business.

2. That said claim, to wit, that the said Mississippi Valley Lumberman is the official organ and representative of the said retail dealers in lumber and building material in the various States where they are located and do business has not been contradicted or denied by many of the said dealers.

3. That the respondent, Luke W. Boyce, residing in the said city of Minneapolis, in the said State of Minnesota, is, and for several years last past has been, a detective doing business under the trade name and style of "Northern Information Bureau," which bureau has been and is conducted and operated by the said Luke W. Boyce under a plan or system of subscription contracts whereby subscribers are entitled to the services of said bureau, its agents, and detectives, at cost in securing information desired by said subscribers, among whom is the said respondent, Platt B. Walker.

4. That a branch or form of retail lumber trade in the United States is, and for many years has been, carried on by so-called "mail-order houses," which sell generally through the medium of mail orders lumber and building materials in interstate commerce direct to the consumer in nearly all of the States of the United States; that such mail-order houses are either manufacturers of lumber or commercial establishments; that said commercial houses generally purchase their supplies of lumber products from the manufacturer and wholesale dealer without the intervention of the retail dealer and that said mail-order houses are engaged in competition with such of said respondents as conduct retail lumber yards for the sale at retail of lumber and building materials.

5. That with the intent, purpose, and effect of forcing the ultimate consumer to buy his required supplies of lumber and building materials from the so-called regular and recognized retail merchants operating retail yards where such lumber or building materials are used, and thereby unfairly interfering with and preventing said mail-order houses from operating directly with the consumer, and also thereby unfairly interfering with or preventing any consumer from purchasing his required supplies of lumber and building materials from said mail-order houses, the said Platt B. Walker and the said Lumberman Publishing Co. have, for more than two years last past, repeatedly, by means of verbal and written communications between said so-called regular and recognized retail merchants, and the Lumberman Publishing Co., by articles published in the said Mississippi Valley Lumberman and by means of information procured through the said Luke W. Boyce, urged, encouraged, and suggested by published articles in the said Mississippi Valley Lumberman and otherwise, that the retail lumber dealers systematically and on a large scale write and send, and cause to be written and sent, and procure others to write and send, to said mail-order houses, letters containing requests for statements of estimates of the quality and quantity of lumber and building materials required for certain building purposes, the price therefor, and also containing requests for printed matter, advertisements, and other special information furnished bona fide customers and prospective customers by such mail-order houses to cause such mail-order houses annoyance, expense, and delay in the transaction of their business, and for the purpose, among other things, of furnishing the information thus secured to the said respondent, Platt B. Walker, for publication, and said Platt B. Walker has published in said trade journal information thus obtained and thereby, and by other means, the said respondent, Platt B. Walker, is acquainted with the said activities of the retail dealers.

6. That, pursuant to the urging, encouragement, and suggestions of said respondents, as aforesaid, certain of the said retail lumber dealers wrote and sent certain letters, as afore-

said, and the said writers and senders of said letters, as aforesaid, had no purpose or intention of buying any lumber or building materials from said mail-order houses; that one of the objects of some of the said writers and senders of letters, as aforesaid, was to secure information as to the business methods, prices, terms, etc., which was or would be useful in meeting the competition of the said mail-order concerns, whereas others had as an object the harrassment and injury of said mail-order concerns; that the said writers and senders of such letters, as aforesaid, knew, or are chargeable with knowledge, that the granting of, or even the consideration of such requests caused the mail-order houses expense.

7. That, with the intent, purpose, and effect of forcing the ultimate consumer to buy his required supplies of lumber and building materials from the so-called regular and recognized retail merchants operating retail yards where such lumber or building materials are used, and thereby unfairly interfering with and preventing said mail-order houses from dealing directly with the consumer, and also thereby unfairly interfering with, or preventing any consumer from purchasing the required supplies of lumber and building materials from said mail-order houses, said Platt B. Walker and said Lumberman Publishing Co. have for more than two years last past repeatedly, by means of verbal and written communications between said so-called regular and recognized retail merchants and the Lumberman Publishing Co., by articles published in the said Mississippi Valley Lumberman, and by means of information procured from said Luke W. Boyce, urged, encouraged, and suggested that certain retail lumber dealers use their influence with banks, credit reporting agencies, and others who are called upon by said mail-order houses to make reports as to the identity and occupation of the persons from whom they receive requests, to fail to make such reports.

8. That the urging, encouragement, and suggestions of said respondents as aforesaid necessarily resulted in a delay in the receipt of said reports, and in some instances at least, resulted in no reports being sent to, or received by, said mail-order houses.



9. That with the intent, purpose, and effect of forcing the ultimate consumer to buy his required supplies of lumber or building materials from the so-called regular and recognized retail merchants operating retail yards where such lumber or building materials are used, and thereby unfairly interfering with and preventing said mail-order houses from dealing directly with the consumer, and also thereby unfairly interfering with or preventing any consumer from purchasing his required supplies of lumber or building material from said mail-order houses, the said Platt B. Walker and the said Lumberman Publishing Co. have for more than two years last past repeatedly by means of verbal and written communications between said so-called regular and recognized retail merchants and the Lumberman Publishing Co., and by means of information procured from said Luke W. Boyce, endeavored to induce, and in some instances, have induced, manufacturers to refrain from and to discontinue furnishing supplies of lumber and building materials to some of said mail-order houses and by threats that the retail dealers would withdraw their patronage, have induced manufacturers to discontinue selling to mail-order houses and have deterred and do deter manufacturers from selling supplies to such mail-order houses:

(1) By means of information obtained from the said Luke W. Boyce as to the names and methods of manufacturers selling to mail-order houses;

(2) By means of correspondence carried on by said respondent, Platt B. Walker, with said manufacturers;

(3) By the publication in the Mississippi Valley Lumberman by said respondent, Platt B. Walker, of the names of manufacturers who supply mail-order houses;

(4) By publication, in said trade journal, by said respondent, Platt B. Walker, of articles containing direct or implied threats that the regular dealers would withdraw their patronage from said manufacturers if said manufacturers sold to mail-order houses.

(5) By articles published in said trade journal by the respondent, Platt B. Walker, advising the retail dealers to withdraw their patronage from such manufacturers; and,

(6) By publication in said trade journal by the respondent, the said Platt B. Walker, of a false report to the effect that an investigation had been instituted by detectives of the said "Northern Information Bureau," to ascertain the names of all the manufacturers selling to mail-order houses.

10. That for the purpose of publishing and disseminating information for the use and benefit of regular dealers in the competition of the said regular dealers with mail-order houses, said Platt B. Walker and said Lumberman Publishing Co. have sought and obtained confidential information from mail-order houses, particularly in reference to their sources of supplies, financial condition, internal affairs and business secrets (1) through conference with former employees of such mail-order houses, (2) through fraternizing, correspondence with, and solicitations by said Platt B. Walker and said Lumberman Publishing Co., of certain officers and employees of said mail-order houses, and (3) through the operations of the said "Northern Information Bureau," its detectives and agents.

11. That said respondents, Platt B. Walker and Lumberman Publishing Co., have published in the said Mississippi Valley Lumberman information thus obtained, together with other disparaging articles and statements concerning the business methods of said mail-order houses, some of which information so published was misleading and false, but which said respondent, Platt B. Walker, at the time of said publication believed to be true.

12. That the activities of the said respondents, Platt B. Walker and Lumberman Publishing Co., as aforesaid, unfairly interfered with or prevented the said mail-order houses from dealing directly with the consumer and also unfairly interfered with or prevented consumers from purchasing from mail-order houses.

13. That many of said regular retail lumber dealers have been aware of the general manner in which, and the general purpose for which, the aforesaid activities of the said respondents, Platt B. Walker and Lumberman Publishing Co., were instituted, and have either actively or passively availed themselves of some, or all, of the unfair benefits and advantages resultant therefrom.

#### CONCLUSIONS.

That the said methods of competition set forth in the foregoing findings of facts, and each and all of the said methods of competition, under the circumstances therein set forth,

constitute unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the said act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

**PLATT B. WALKER AND LUMBERMAN PUBLISHING CO.—ORDER TO  
CEASE AND DESIST.**

The Federal Trade Commission, having issued and served its complaint herein, and the said respondents, Platt B. Walker and Lumberman Publishing Co., having made and filed their respective answers to said complaint, and having further entered into, agreed to, and signed an agreement or stipulation as to the facts, and the Commission, on the said complaint, answer, and stipulation, on the date hereof, having made and filed a report containing its findings as to the facts and its conclusions that the said respondents, Platt B. Walker and Lumberman Publishing Co., have violated section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore, it is

*Ordered*, That the said respondents, Platt B. Walker and Lumberman Publishing Co., forever cease and desist from—

1. Urging, encouraging, and suggesting, through the medium of articles published in the Mississippi Valley Lumberman, a lumber trade journal, published in the city of Minneapolis, State of Minnesota, or any other trade journal, or newspaper, or disseminating, circulating, or imparting, in any manner whatsoever, any information calculated, or having a tendency, to result in any retail dealer in lumber or building materials, systematically, or on a large scale, or in bad faith, or by subterfuge, writing and sending, causing to be written and sent, or procuring others, who are not bona fide customers of any mail order concern dealing in lumber or building materials, to write and send to any said mail order concern requests for estimates of the kind, quantity, and prices of lumber and building materials and for catalogues, printed matter, and special information intended only

for bona fide customers and bona fide prospective customers: *Provided*, That nothing herein contained shall be construed to prevent such requests, where disclosure is made by any person, firm, or corporation, making said requests, of his or its connection with, or his or its acting for any or all of said retail dealers.

2. Urging, encouraging, or suggesting, through the medium of articles published in said Mississippi Valley Lumbermap, or any other trade journal or newspaper, or disseminating, circulating, or imparting, in any manner whatsoever, any information calculating, or having a tendency, to cause any retail dealer in lumber or building materials, to use his or its influence with banks, credit reporting agencies, or others, who are, or may be, called upon by any mail order concern dealing in lumber or building materials, to report as to the identity or occupation of any person suspected of making requests, not in good faith, for information about any said mail order concern, to delay in making, or fail to make said reports, or to make misleading reports.

3. Inducing, or endeavoring to induce, any manufacturer, or wholesaler, of lumber or building materials to refrain from, or discontinue, furnishing supplies of lumber or building materials, to any mail-order concern dealing in lumber or building materials, by means of actual or implied threats that any retail dealer in lumber or building materials would withdraw his or its patronage from any manufacturer or wholesale dealer in lumber or building materials, or by any other means calculated to prevent said manufacturer or wholesaler from selling to any said mail-order concern.

4. Seeking to obtain or obtaining confidential information from any mail-order concern dealing in lumber or building materials, in reference to its source of supplies, financial condition, internal affairs, or business secrets, by any means whatsoever, for the purpose of disseminating or imparting information for the use and benefit of any retail dealer in lumber or building materials.

#### ORDER OF DISMISSAL.

It appearing to the Commission that the Washburn-Merrick Lumber Co. and J. H. Queal & Co., respondents herein,

had discontinued business and had no legal existence at the time of the filing of the complaint herein, and

It further appearing to the Commission that there is not sufficient evidence to justify further proceedings as to the International Lumber Co., Superior Lumber & Coal Co., James A. Smith Lumber Co., Nye-Schneider-Fowler Co., Walrath & Sherwood Lumber Co., Seward Lumber & Fuel Co., Santa Barbara Lumber Co., Reliance Lumber & Timber Co., and J. C. Starkey, respondents herein: Now, therefore, it is

*Ordered*, That the complaint in this cause be, and the same hereby is, dismissed, without prejudice, as to the respondents Washburn-Merrick Lumber Co., J. H. Queal & Co., International Lumber Co., Superior Lumber & Coal Co., James A. Smith Lumber Co., Nye-Schneider-Fowler Co., Walrath & Sherwood Lumber Co., Seward Lumber & Fuel Co., Santa Barbara Lumber Co., Reliance Lumber & Timber Co., and J. C. Starkey.

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## FEDERAL TRADE COMMISSION

v.

### NATIONAL DISTILLING CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS, APPROVED SEPTEMBER 26, 1914, AND OF THE ALLEGED VIOLATION OF SECTIONS 2 AND 3 OF THE ACT OF CONGRESS, APPROVED OCTOBER 15, 1914.

Docket No. 26.—February 15, 1918.

#### SYLLABUS.

Where a corporation engaged in the manufacture and sale of compressed yeast, for the purpose and with the effect of inducing purchasers of yeast to deal with it and to refrain from dealing with its competitors—

- (a) gave and offered to give to bakers and dealers compressed yeast in quantities larger than required for sample or demonstration purposes;
- (b) gave and offered to give to customers and employees of customers, gratuities, entertainment, and presents;
- (c) made contributions of money to bakers' associations, other than reasonable contributions for educational and scientific purposes relating to the use of compressed yeast;

(d) provided entertainment, including cigars, drinks, meals, theater tickets, and other forms of amusement, to bakers attending trade conventions; and

(e) delivered and offered to deliver to bakers and dealers quantities of yeast without making any immediate charge therefor, the price thereof being included and distributed in the price of yeast delivered under a contract then or subsequently made:

*Held*, That such acts constituted unfair methods of competition, in violation of section 5 of the act of September 26, 1914.

## COMPLAINT.

• The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the National Distilling Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

### I.

PARAGRAPH 1. That the respondent, National Distilling Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, having its principal office and place of business in the city of Milwaukee, in said State, and is now, and at all times hereinafter mentioned was, engaged, among other things, in manufacturing and selling compressed yeast, hereinafter referred to as yeast, in commerce among the several States and Territories of the United States and the District of Columbia; that at all times hereinafter mentioned, the respondent in the manufacture and sale of yeast assumed and used the trade name "Red Star Compressed Yeast Co."

PAR. 2. That with the effect of stifling or suppressing competition in interstate commerce in the manufacture and sale of yeast, respondent is now and for more than a year last past has been systematically and on a large scale giving or offer-

ing to give to operative bakers using yeast, both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to purchase or contract to purchase from the respondent yeast without other consideration therefor, in quantities larger than required under the particular circumstances for proper sample or demonstrative purposes.

PAR. 3. That with the effect of stifling or suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now and for more than a year last past has been systematically and on a large scale giving and offering to give to operative bakers using yeast, both its customers and prospective customers, and its competitors' customers and prospective customers as an inducement to purchase or contract to purchase yeast from the respondent and to employees of such users of yeast as an inducement to said employees to influence their respective employers to purchase or contract to purchase yeast from the respondent, gratuities such as liquor, cigars, meals, and other personal property, and in some instances money.

PAR. 4. That with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now and for more than a year last past has been systematically and on a large scale giving and offering to give operative bakers using yeast, both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to purchase or contract to purchase yeast from the respondent, and to employees of such users of yeast as an inducement to such employees to influence their respective employers to purchase or contract to purchase yeast from the respondent, Christmas presents and special holiday presents including, among other things, liquors, cigars, silverware, and, in some instances, money.

PAR. 5. That with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, respondent is now and for more than a year last past has been systematically and on a large scale, providing entertainment for operative bakers using yeast, both its customers and prospective customers and for their em-

ployees as an inducement to purchase or contract to purchase yeast, or to influence the purchase of yeast from respondent; the said entertainment is furnished to such users of yeast and their employees by respondent's route drivers, selling agents, and other agents and employees; that such entertainment includes, among other things, money for entertainment purposes, meals, drinks, cigars, and theater tickets.

PAR. 6. That with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now and for more than a year last past has been systematically contributing sums of money to funds raised by numerous associations of operative bakers known as "Master Bakers Association" to defray expenses of periodic conventions held by said associations in various parts of the United States; that such contributions range from \$10 to \$25, depending on the relative size and importance of the association, and are made to obtain and retain the patronage of said operative bakers.

PAR. 7. That with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, respondent is now and for more than a year last past has been systematically, and on a large scale, providing entertainment for operative bakers attending the association conventions referred to in paragraph 6 above; that said entertainment is furnished by agents of the respondent to said conventions and is provided to obtain and retain the patronage of said operative bakers and includes, among other things, cigars, drinks, meals, theater tickets, and automobile rides.

PAR. 8. That with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now and for more than a year last past has been systematically and on a large scale providing entertainment to operative bakers using yeast, both its customers and its prospective customers; said entertainment is furnished to said users of yeast by its representatives at its principal distributing centers for the purpose of obtaining and retaining the patronage of said operative bakers and includes, among other things, cigars, drinks, meals, theater tickets, and automobile rides.





and selling compressed yeast, hereinafter referred to as yeast, in commerce among the several States and Territories of the United States and the District of Columbia; that at all times hereinafter mentioned, the respondent in the manufacture and sale of yeast assumed and used the trade name Red Star Compressed Yeast Co.

PAR. 2. That the respondent, National Distilling Co., for several years last past in the course of interstate commerce in violation of section 2 of the Clayton Act, has discriminated in price and is now discriminating in price between different purchasers of yeast, which yeast is sold for use, consumption, or resale within the United States or the Territories thereof, or the District of Columbia, with the effect that such discrimination may be to substantially lessen competition or tend to create a monopoly in the yeast industry.

PAR. 3. That the respondent, National Distilling Co., for several years last past in the course of interstate commerce in violation of section 3 of the Clayton Act, has sold and made contracts for sale, and is now selling and making contracts for sale of large quantities of yeast for use, consumption, and resale within the United States, and has fixed and is now fixing the price charged therefor, or discount from, or rebate upon such price on the condition, agreement, or understanding that the purchasers thereof shall not use or deal with the goods, wares, merchandise, supplies, or commodities of a competitor or competitors of respondent with the effect that such sales and contracts for sales for such conditions, agreements, or understandings may be and is to substantially lessen competition and to tend to create a monopoly in the yeast industry.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, the National Distilling Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade

Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered its appearance by August Bergenthal, its secretary, and having stipulated of record that the Commission might forthwith proceed to make its findings and order disposing of this proceeding, the Commission makes this report and findings as to the facts and conclusions.

(1) That the respondent, National Distilling Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, having its principal office and place of business in the city of Milwaukee, State of Wisconsin.

(2) That for more than three years last past the respondent has been engaged in the business of manufacturing, shipping, marketing, and selling compressed yeast; that in the conduct of said business the respondent has manufactured such yeast in the cities of Milwaukee and Cudahy, county of Milwaukee, State of Wisconsin, and transported same into and through various States and Territories of the United States and the District of Columbia, for use and resale therein, and that in the marketing and selling of such yeast, the respondent, its officers and agents, have sold and made contracts of sale for such yeast in the State of Wisconsin and numerous other States and Territories of the United States and District of Columbia in direct competition with manufacturers of and dealers in such yeast.

(3) That the manufacture, sale, distribution, and marketing of compressed yeast is a matter of vital importance to the public.

(4) That the respondent, for more than three years last past has systematically given, and offered to give, compressed yeast without any consideration therefor, and in quantities larger than required under the particular circumstances for proper sample or demonstrative purposes, to operative bakers and dealers using such yeast, both its customers and its prospective customers, for the purpose of obtaining and retaining their patronage, and that the effect of such practices has been, and is to induce the purchasers

of yeast to refrain from dealing with competitors of respondent.

(5) That the respondent for more than three years last past has systematically given, and offered to give, gratuities, consisting of liquor, cigars, meals, money, and other personal property to operative bakers and dealers using such yeast, both its customers and its prospective customers, and their employees, for the purpose of obtaining and retaining the patronage of such operative bakers, and that the effect of such practices has been, and is, to induce purchasers of yeast to refrain from dealing or contracting to deal with competitors of respondent.

(6) That the respondent for more than three years last past on a large scale has given and offered to give Christmas presents and special holiday presents consisting of cigars, liquors, silverware, money, and other personal property to operative bakers and dealers using yeast, both its customers and its prospective customers and their employees, for the purpose of obtaining and retaining the patronage of such operative bakers, and that the effect of such practice has been, and is, to induce purchasers of compressed yeast to refrain from dealing or contracting to deal with competitors of respondent.

(7) That for more than three years last past, the respondent, through and by its servants, agents, and employees, has systematically provided entertainment consisting of theater tickets, meals, drinks, automobile rides and money for amusement purposes for operative bakers and dealers using compressed yeast, both its customers and its prospective customers and their employees, for the purpose of obtaining the patronage of such operative bakers, and that the effect of such practice has been, and is, to induce purchasers of compressed yeast to refrain from dealing or contracting to deal with competitors of respondent.

(8) That the respondent for more than three years last past has been systematically contributing sums of money to funds raised by numerous associations of operative bakers, known as "Master Bakers' Association", to defray the expenses of periodic conventions held by said associations in various parts of the United States, with the purpose of obtaining and retaining the patronage of said operative

bakers; that such contributions in the past three years have been as follows:

Date	Location	Amount
1916.		
Mar. 8	Indianapolis.....	\$25
Mar. 24	Philadelphia.....	30
Apr. 7	Oklahoma State.....	25
13	Ocala, Fla.....	20
Aug. 10	Chickadee.....	10
23	Kentucky.....	25
Oct. 10	Winnipeg.....	50
		<hr/> 185
1916.		
Apr. 20	Oklahoma.....	25
May 7	Idaho.....	25
		<hr/> 50
1917.		
May 8	Peoria.....	25
May 22	Frank, Mississippi.....	25
Sept. 4	Winnipeg.....	50
		<hr/> 100
		<hr/> 335

(9) That for more than three years last past numerous associations of operative bakers known as "Master Bakers Associations" have held periodic trade conventions in various parts of the United States, and the respondent, by and through its servants, agents, and employees, has systematically furnished entertainment consisting of cigars, drinks, meals, theater tickets, automobile rides, and other forms of amusement for operative bakers and dealers using compressed yeast, both its customers and prospective customers attending such conventions, with the purpose of obtaining their patronage, and that the result of such practice has been and is to induce purchasers of such yeast to refrain from dealing or even meeting to deal with competitors of respondent.

(10) That for more than three years last past respondent has systematically delivered and offered to deliver to operative bakers and dealers using compressed yeast large quantities of such yeast for various purposes without making any immediate charges therefor, the price of such yeast so delivered being included and distributed in the price of yeast delivered under the terms of the contract then in existence, or made up for a long period of such delivery of yeast for which

no immediate charge is made, and that such deliveries and offers to deliver compressed yeast have been and are made with the purpose of inducing users of such yeast to continue or enter into contracts of purchase for such yeast from respondent and that the result of such practice has been and is to compel users of such yeast to refrain from entering into such contracts of purchase with competitors of respondent.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 4, 5, 6, 7, 9, and 10 and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent, National Distilling Co., having entered its appearance by A. Bergenthal, its secretary, and having stipulated of record that the Commission may forthwith proceed to make its findings as to the facts in this proceeding and issue its order disposing of the same, and the Commission, on the date hereof, having made and filed a report containing its findings as to the facts, and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof. Therefore,

*It is ordered*, that the respondent, National Distilling Co., its officers and agents, cease and desist from:

I. Giving, or offering to give, compressed yeast without any consideration therefor, to operative bakers, both its customers and prospective customers, in quantities larger than required under the particular circumstances for proper sample or demonstrative purposes.

II. Giving, or offering to give, operative bakers, using compressed yeast, both its customers and prospective customers, their agents, servants, and employees, with the intent, purpose, or effect of obtaining and retaining the patronage of said operative bakers and inducing them to refrain from dealing, or contracting to deal, with competitors of respondent, the following:

(a) Gratuities such as liquors, cigars, meals, money, or other personal property,

(b) Christmas presents and holiday presents of any kind or nature whatsoever,

(c) Any and all entertainment, including theater tickets, meals, drinks, automobile rides, and other forms of like amusement,

(d) Entertainment at "Master Bakers' Association" trade conventions, and meetings of similar character, including cigars, drinks, meals, theater tickets, automobile rides, and other forms of like amusement.

III. Delivering, or offering to deliver, quantities of compressed yeast to operative bakers without making any immediate charge therefor, and including and distributing the price for the same in the price of yeast delivered during the term of a contract then in existence or made subsequent to the period of delivery of yeast for which no immediate charge is made, for the purpose of inducing said operative bakers to purchase or contract to purchase yeast from the respondent.

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## FEDERAL TRADE COMMISSION

v.

### S. S. ROSENBAUM, DOING BUSINESS AS RELIANCE VARNISH WORKS.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS, APPROVED SEPTEMBER 26, 1914.

Docket No. 59.—March 13, 1918.

#### SYLLABUS.

Where a concern engaged in the manufacture and sale of varnish and kindred products gave and offered to give to employees of customers and of competitors' customers, gratuities, entertainment, and

money, as an inducement for them to influence their employers to purchase its goods or to refrain from dealing with its competitors: *Held*, That such payments and offers to pay, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Reliance Varnish Co., hereinafter referred to as respondent, has been, for more than a year last past, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the Reliance Varnish Works, is a corporation, organized and existing and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place of business at the city of Newark, in said State, and is now and for more than one year last past has been engaged in manufacturing and selling varnish and kindred products throughout the States and Territories of the United States, and that at all times hereinafter mentioned, the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That, with the intent, purpose and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of varnish and kindred products, the respondent, for more than one year last past has been, systematically and on a large scale, giving and offering to give to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to influence their employers to purchase or contract to purchase from the respondent, varnish and kin-



ured products, without other consideration therefor, gratuities such as liquor, cigars, meals, theater tickets, valuable presents, and entertainment.

PAR. 2. That, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of varnish and kindred products, the respondent, for more than one year last past, has been systematically and on a large scale, secretly paying and offering to pay to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge and consent of their employers, large sums of money as an inducement to influence them and employers to purchase or contract to purchase from the respondent varnish and kindred products, or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondent.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, the Reliance Varnish Works, has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in this respect and the respondent having filed an answer admitting that the matters and things alleged in said complaint are true in the manner and form herein set forth, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to facts, and its order disposing of this proceeding without the introduction of testimony in support of the same and waiving any and all rights to the introduction of such testimony, the Commission makes this report and findings as to the facts and conclusions.

## FINDINGS AS TO THE FACTS.

**PARAGRAPH 1.** That the respondent, the Reliance Varnish Works, is S. S. Rosenbaum, trading as the Reliance Varnish Works with his principal place of business located at the city of Newark, in the State of New Jersey, now and for more than one year last past engaged in the business of manufacturing and selling varnish and kindred products generally in commerce throughout the States and Territories of the United States in direct competition with other persons, firms, copartnerships and corporations manufacturing and selling like products.

**PAR. 2.** That for more than one year last past the respondent has given and offered to give employees of both his customers and prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent, varnish, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, gratuities consisting of liquors, cigars, meals, theater tickets, and other personal property.

**PAR. 3.** That for more than one year last past the respondent has given and offered to give employees of both his customers and prospective customers and his competitors' customers and prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent, varnish, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, entertainment consisting of amusements and diversions of various kinds and description.

**PAR. 4.** That for more than one year last past, the respondent has given and offered to give employees of both his customers and prospective customers and his competitors' customers and prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent, varnish and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, large sums of money.

[illegible]

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[REDACTED]

other consideration therefor, gratuities, such as liquors, cigars, meals, theater tickets, valuable presents, and other personal property.

2. Giving or offering to give employees of his customers or prospective customers or those of his competitors' customers or prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent varnish and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, entertainment, consisting of amusements or diversions of any kind whatsoever.

3. Giving or offering to give employees of his customers or prospective customers or those of his competitors' customers or prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent varnish and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent without other consideration therefor, money.

The Commission has also issued similar orders in other cases involving substantially the same facts, as shown by the following:

TABLE.

Date.	Docket No.	Respondent.	Commodity.	Answer, stipulation, or trial.
1918.				
Mar. 13.	70	O'Neil Oil & Paint Co., Milwaukee, Wis.	Paints and kindred products.	Answer and consent.
18	78	Chas. R. Long, Jr., Co., Louisville, Ky.	.....do.....	Do.
Apr. 15	42	Columbus Varnish Co., Columbus, Ohio.	Varnish and kindred products.	Do.
15	48	Walter L. Trainer Co., Philadelphia, Pa.	.....do.....	Do.
15	50	Van Camp Varnish Co., Cleveland, Ohio.	.....do.....	Do.
15	51	Sun Varnish Co., Louisville, Ky.	.....do.....	Do.
15	52	Lilly Varnish Co., Indianapolis, Ind.	.....do.....	Do.
15	54	Lindeman Wood-Finish Co., Shelbyville, Ind.	Paints, stains, and kindred products.	Do.
15	55	Adams & Eiting Co., Chicago, Ill.	Varnish and kindred products.	Do.
15	56	Valentine & Co., New York, N. Y.	.....do.....	Do.
15	58	George D. Wetherill & Co., Philadelphia, Pa.	.....do.....	Do.
15	60	The Blackburn Varnish Co., Cincinnati, Ohio.	.....do.....	Do.
15	61	F. W. Thurston Varnish Co., Chicago, Ill.	.....do.....	Do.

~~ALL INFORMATION CONTAINED~~

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[illegible]

TABLE—Continued.

Date.	Docket No.	Respondent.	Commodity.	Answer, stipulation, or trial.
1919.				
Feb. 20	229	Consolidated Packing & Supply Co., New York, N. Y.	Engine packings and supplies.	Answer and consent.
Mar. 20	246	W. P. Wilkin Co. (Inc.), Newport News, Va.	Ship supplies.....	Do.
Apr. 15	43	Flood & Conklin Co., Newark, N. J.	Varnish and kindred products.	Do.
15	179	Bird-Archer Co., New York, N. Y.	Boiler compounds, chemicals, etc.	Stipulation.
15	244	Berry Bros. (Inc.), of Boston, Mass.; Evert W. Hinckley and William H. Kennedy. <sup>1</sup>	Varnish and kindred products.	Answer, stipulation, and consent.
May 27	225	M. L. P. Packing & Supply Co., New York, N. Y.	Engine supplies, etc..	Trial.
27	262	F. Kenney Manufacturing Co., Boston, Mass.	Soap and kindred products.	Answer and consent.
27	263	Wm. H. Swan & Sons, New York, N. Y.	Ship stores and steamship supplies.	Do.
27	41	Rockford Varnish Co., Rockford, Ill.	Varnish and kindred products.	Trial.

<sup>1</sup> Complaint dismissed as to William H. Kennedy.

## FEDERAL TRADE COMMISSION v. TYPEWRITER EMPORIUM.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS, APPROVED SEPTEMBER 26, 1914.

Docket No. 37—March 26, 1918.

### SYLLABUS.

Where a corporation engaged in the business of buying, repairing, rebuilding, and selling used typewriters, sold the same by advertisements in which it was not distinctly, definitely, and clearly stated and set out that such machines were used, repaired, or rebuilt:

*Held*, That such advertisements, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the Typewriter Emporium, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An

1. The first part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

2. The second part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

3. The third part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

4. The fourth part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

5. The fifth part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

6. The sixth part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

7. The seventh part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

8. The eighth part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

9. The ninth part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

10. The tenth part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

11. The eleventh part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

12. The twelfth part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

13. The thirteenth part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

14. The fourteenth part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

15. The fifteenth part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

from to and through the other States and Territories of the United States and the District of Columbia.

PAR. 3. That in the conduct of its business respondent deals entirely in used or second-hand typewriters of standard makes, whose names and reputations through years of usage and advertising have become known to the purchasing public as the recognized leading machines. That after respondent purchases such machines, it repairs and rebuilds the same and promotes the sale thereof by a system of advertisements placed in newspapers, magazines, periodicals, trade papers, and other publications circulated throughout the States and Territories of the United States and the District of Columbia and foreign countries, and that with the intent, purpose and effect of stifling and suppressing competition in interstate commerce in the sale of typewriters, respondent for more than one year last past has published and caused to be published, as aforesaid, certain false and misleading advertisements designed and calculated by the words, phrases, and pictures therein contained to cause, and the same have caused, customers and prospective customers to believe that respondent was offering for sale new typewriters of standard makes at and for a price of less than one-half of that charged by the makers of such machines, when in fact respondent does not sell or handle new machines, but only sells and offers for sale used or second-hand machines which have been repaired and rebuilt by it, as aforesaid.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above named respondent, Typewriter Emporium, has been, and now is, using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and respondent having filed its answer, ad-





Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent having filed its answer, admitting that the matters and things alleged and contained in the said complaint are true, in the manner and form therein set forth, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to the facts, and its order, disposing of this proceeding, without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,,

*It is ordered*, that the respondent, Typewriter Emporium, of Chicago, State of Illinois, and its officers, directors, agents, servants, and employees cease and desist from offering for sale used, second-hand, repaired or rebuilt typewriters, by means of advertisements, circulars, letters, or other similar devices, in which it is not distinctly, definitely, and clearly stated and set out that such machines are used, second-hand, repaired or rebuilt typewriters.

The Commission has also issued similar orders in other cases involving substantially the same facts, as shown by the following:

TABLE.

Dates.	Docket No.	Respondents.	Answer, stipulation, or trial.
1918.			
Apr. 30	34	Dearborn Typewriter Co. (Inc.), Chicago, Ill. ....	Answer and consent.
May 24	35	Harry A. Smith, Chicago, Ill. ....	Do.
June 6	35	W. H. Beardsley, doing business as Metro Typewriter Co., Brooklyn, N. Y.	Do.

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**PARAGRAPH 1.** That the respondent, Chicago Lino-Tabler Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business at the city of Chicago, in said State, and is now, and was at all times hereinafter mentioned, engaged in the manufacture of a certain tabular system which is used by printers to produce printed ruled lines for products requiring tabulation.

**PAR. 2.** That the respondent is the owner of a patent upon the said system or device, and is now and has for more than two years last past, been engaged in manufacturing, selling, and leasing the same in commerce among the several States and Territories of the United States, and in the District of Columbia.

**PAR. 3.** That with the intent, purpose and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of devices and apparatus used by printers to produce printed ruled lines for tabulation, the respondent has caused for more than two years last past and still continues to cause to be issued and circulated in pamphlet form and published in trade papers among the printing trade in the several States and Territories of the United States, and in the District of Columbia, what purports to be an accurate quotation of claim No. 7 of Patent 1,168,602, on a system of ruling type forms for tabular lines, said patent being owned by said respondent, which quotation is incorrect and misleading in that the word "type" was changed to the word "printing" and the words "as for the purpose specified" were omitted, and that the effect of said change and omission was to broaden the said patent claim so as to cover devices and apparatus of respondent's competitors.

**PAR. 4.** That with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of the above-mentioned devices and apparatus, the respondent has been interfering for more than two years last past and still continues to interfere with customers of its competitors, and has endeavored and continues to endeavor to coerce them into ceasing from purchasing their supply of such devices and apparatus from its competitors, by threatening to sue its competitors' customers

The following is a list of the names of the persons who were present at the meeting of the Board of Directors of the American Telephone and Telegraph Company, held on the 10th day of January, 1901, at New York City:

Mr. J. E. Smith	Mr. J. B. Jones
Mr. W. H. Brown	Mr. C. D. White
Mr. A. M. Green	Mr. F. L. Black
Mr. R. K. Grey	Mr. S. P. Hall
Mr. T. Q. Adams	Mr. U. V. Baker
Mr. X. Y. Carter	Mr. Z. W. Davis
Mr. E. F. Evans	Mr. G. H. Foster
Mr. I. J. Gibson	Mr. K. L. Harris
Mr. M. N. Hill	Mr. O. P. King
Mr. Q. R. Lee	Mr. S. T. Long
Mr. U. V. Martin	Mr. W. X. Nelson
Mr. Y. Z. Owen	Mr. A. B. Parker
Mr. C. D. Quinn	Mr. E. F. Reed
Mr. G. H. Russell	Mr. I. J. Scott
Mr. K. L. Taylor	Mr. M. N. Thomas
Mr. O. P. Walker	Mr. Q. R. Young

The meeting was called to order by Mr. J. E. Smith, President of the Company, at 10 o'clock A. M. The minutes of the last meeting were read and approved. The following resolutions were adopted:

- Resolved, That the Board of Directors do hereby authorize the President of the Company to execute any and all contracts, leases, and agreements, not exceeding in value the sum of \$100,000, which may be deemed advisable for the proper management of the business of the Company.
- Resolved, That the Board of Directors do hereby authorize the President of the Company to execute any and all contracts, leases, and agreements, not exceeding in value the sum of \$50,000, which may be deemed advisable for the proper management of the business of the Company.
- Resolved, That the Board of Directors do hereby authorize the President of the Company to execute any and all contracts, leases, and agreements, not exceeding in value the sum of \$25,000, which may be deemed advisable for the proper management of the business of the Company.

The meeting adjourned at 11 o'clock A. M.

chine Engineers' Journal, the Inland Printer and the Pacific Printer, by letters and verbal conversations, to refuse to accept the advertising of respondent's competitor, said Auto-Mat Tabular Co., such letters and conversations being (a) in the form of statements as to an alleged infringing nature of such competitor's devices; and (b) in the form of disparaging statements as to the financial condition of said competitor offering such advertisements.

7. That the said respondent, Chicago Lino-Tabler Co., has been making, for more than two years last past, and up to the time of the filing of the said complaint, continued to make, false and misleading statements concerning said competitor to certain trade journals and customers of said competitor, to wit: Typesetting Machine Engineers' Journal, the Inland Printer, and the Intertype Corporation, through the medium of verbal conversations and letters in reference to a certain suit pending as to its status and to the effect that said competitor had made practically no defense in the said suit in equity.

#### CONCLUSIONS.

That the said methods of competition set forth in the foregoing findings of facts, and each and all of the said methods of competition, under the circumstances therein set forth, transcend the rights and privileges of a patentee in the protection of its patents and constitute unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the said act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondent, Chicago Lino-Tabler Co., having made and filed its answer to said complaint, and having further entered into, agreed to, and signed an agreement or stipulation as to the facts, and the Commission, on the said complaint, answer, and stipulation, on the date hereof, having made and filed a report containing its findings as to the facts and its conclusions that the

respondent has violated section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof; now, therefore,

*It is ordered:* That the said respondent, Chicago Lino-Tabler Co., forever cease and desist from—

1. Interfering, through the medium of circulars, letters, or any other method of communication whatsoever, with any customer or customers of its competitor, the Auto-Mat Tabular Co., or any customer or customers of any other competitor or competitors, that the said Chicago Lino-Tabler Co. may now or hereafter have, and endeavoring through the medium of circulars, letters, or any other method of communication whatsoever, to coerce any customer or customers of the said Auto-Mat Tabular Co., or any customer or customers of any other competitor or competitors that the said Chicago Lino-Tabler Co. may now or hereafter have, into ceasing from purchasing their supply of devices and apparatus from the said Auto-Mat Tabular Co., or any other competitor or competitors that the said Chicago Lino-Tabler Co. may now or hereafter have, by threatening to sue any customer or customers of the said Auto-Mat Tabular Co., or any customer or customers of any other competitor or competitors that the Chicago Lino-Tabler Co. may now or hereafter have, for infringement of any or all patents owned, or claimed to be owned, by the said Chicago Lino-Tabler Co., when such threats are not made in good faith for the purpose of protecting the Chicago Lino-Tabler Co.'s claims of right under any or all of its said patents.

2. Endeavoring to persuade or force by verbal conversations, circulars, letters, or by any means of communication whatsoever, any trade journals to refuse to accept the advertising of its competitor, the said Auto-Mat Tabular Co., or the advertising of any other competitor, or competitors, which said Chicago Lino-Tabler Co. may now or hereafter have, by statements to the effect that the devices and apparatus of any competitor of said Chicago Lino-Tabler Co. advertising or seeking to advertise in any trade journal infringed any or all patents owned or claimed to be owned by

the said Chicago Lino-Tabler Co.; or by statements relating to the financial standing and condition of any competitor of the said Chicago Lino-Tabler Co. advertising or seeking to advertise in any trade journal, or by any other statements calculated to interfere with the right of any competitor of the said Chicago Lino-Tabler Co. to advertise his devices or apparatus.

3. Making any statements, false, misleading, or otherwise, to any trade journal, or customer, or customers, of the said Auto-Mat Tabular Co., or any customer or customers, of any other competitor, or competitors, that the said Chicago Lino-Tabler Co. may now or hereafter have in reference to a certain suit in equity, instituted by the said Chicago Lino-Tabler Co. in the United States District Court for the Northern District of Illinois, Eastern Division, as to the defense of the Auto-Mat Tabular Co. in the aforesaid suit in equity; or indulging in the same or similar practice as to any other suit or suits hereafter brought by said Chicago Lino-Tabler Co. against any customer or customers of any competitor or competitors, or against any competitor or competitors, which the said Chicago Lino-Tabler Co. may now or hereafter have.

MODIFIED ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent, Chicago Lino-Tabler Co., having made and filed its answer to said complaint and having further entered into, agreed to, and signed an agreement or stipulation as to the facts, and the Commission, on the said complaint, answer, and stipulation, having made and filed a report containing its finding as to the facts and its conclusions that the respondent has violated section 5 of the act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof, and the Commission having heretofore, to wit, on the 4th day of April, 1918, entered and served its order upon the respondent requiring it to cease and desist from certain practices, as reference to the said order being had will more fully and at large appear:



And it appearing to the Commission, upon reconsideration of the matter, that said order should be modified in certain respects:

Now, therefore, the Federal Trade Commission, on its own motion, under and by virtue of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," hereby orders that the order to cease and desist heretofore made in this proceeding on the 4th day of April, 1918, be, and the same is, hereby modified so that, as modified, said order shall read as follows, to wit: Now, therefore,

*It is ordered*, That the respondent, Chicago Lino-Tabler Co., forever cease and desist from—

(1) Threatening, by means of circulars, letters, or any other means of communication whatsoever, any customer or customers of the Auto-Mat Tabular Co., or any customer or customers of any other competitor of the Chicago Lino-Tabler Co., with suits for infringement of any or all patents owned or claimed to be owned by the said Chicago Lino-Tabler Co., unless such said threats be made in good faith and be promptly followed by bona fide suits to protect the said Chicago Lino-Tabler Co.'s rights under such patents.

(2) Endeavoring, by verbal conversations, circulars, letters, or by any other means of communication whatsoever, to persuade, induce, or compel any trade journal to refuse to accept the advertising of its competitor, the said Auto-Mat Tabular Co., or the advertising of any other competitor or competitors of the said Chicago Lino-Tabler Co. by statements to the effect that the devices and apparatus of any competitor of the Chicago Lino-Tabler Co. advertising or seeking to advertise in any trade journal, infringe any or all patents owned or claimed to be owned by the said Chicago Lino-Tabler Co. or by false or misleading statements relating to the financial standing or condition of any competitor of the said Chicago Lino-Tabler Co. advertising or seeking to advertise in any trade journal.

(3) Making any false or misleading statements to any trade journal, or to any customer, or customers of any other competitor or competitors of the said Chicago Lino-

Tabler Co. in reference to a certain suit in equity instituted by the said Chicago Lino-Tabler Co. in the United States District Court for the Northern District of Illinois, Eastern Division, respecting the defense made by the Auto-Mat Tabular Co. in the aforesaid suit in equity, or making such statements as to any other suit or suits hereafter brought by the said Chicago Lino-Tabler Co. against any customer or customers of any competitor or competitors, or against any competitor or competitors of the said Chicago Lino-Tabler Co.

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**FEDERAL TRADE COMMISSION v. FLEISCHMANN  
COMPANY.**

**COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF ALLEGED VIOLATION OF SECTION 3 OF THE ACT OF CONGRESS, APPROVED OCTOBER 15, 1914.**

Docket No. 6.—April 8, 1918.

**SYLLABUS.**

Where a manufacturer selling approximately 90 per cent of the compressed yeast used by bakers in the United States—

**I.**

- (a) systematically gave and offered to give yeast to bakers, in quantities larger than required for proper sample or demonstration purposes, as an inducement to purchase its yeast;
- (b) systematically gave and offered to give to bakers as an inducement to purchase its yeast (1) gratuities, including liquors, cigars, meals, and other personal property, and in some instances money; (2) Christmas and holiday presents, including liquors, cigars, silverware, and in some instances money, and (3) entertainment, including meals, drinks, cigars, theater tickets, other personal property, and in some instances money;
- (c) systematically gave and offered to give to employees of users of yeast gratuities, Christmas and holiday presents, and entertainment, such as are enumerated above, as an inducement to influence their employers to purchase its yeast;
- (d) systematically made contributions of money to bakers' associations, other than reasonable contributions for educational and scientific purposes relating to the use of compressed yeast;

- (e) systematically provided entertainment, including cigars, drinks, meals, theater tickets, automobile rides, and other forms of amusement, to bakers attending trade conventions, directly and through its sales agents at its principal distributing centers, for the purpose of obtaining and retaining the patronage of such bakers;
- (f) systematically delivered and offered to deliver to bakers quantities of yeast, and paid and offered to pay cash, as an inducement to renew, or to enter into, contracts to purchase yeast from it, the value thereof being included and distributed in the price of yeast delivered under a contract then or subsequently made;
- (g) occasionally removed and attempted to remove from the possession of bakers trial samples of yeast given them by competitors by
  - (1) substituting or attempting to substitute its yeast therefor, or
  - (2) by purchasing or attempting to purchase the same;
- (h) occasionally purchased or attempted to purchase, substituted or offered to substitute, its yeast for competitors' yeast bought by and in the possession of bakers;
- (i) occasionally followed competitors' representatives with the object of hindering and embarrassing them in the transaction of their business;
- (j) misrepresented to the trade the methods of its competitors in business; and
- (k) concealed its control of and affiliation with a certain yeast company, and permitted it to be held out and advertised as independent:

**Held,** That such acts constituted unfair methods of competition, in violation of section 5 of the act of September 26, 1914.

## II.

- (l) deviated from an established scale of prices, reducing the same to meet competition and, when such reduction did not result in retaining or obtaining the business, made further reductions to prices below those offered by competitors, with the effect that competition in the sale of yeast might be and was substantially lessened:

**Held,** That such discriminations in price, so far as admitted by said manufacturer to be below the prices of competitors, constituted a violation of section 2 of the act approved October 15, 1914.

## III.

- (m) entered into long-time contracts with customers providing in terms that such customers were to purchase from such manufacturer all the yeast required by them, and after the issuance of complaint by the Federal Trade Commission, revised such contracts eliminating the clause requiring them to purchase from such manufacturer their entire requirements; and
- (n) where it was proven that customers under the new contract declined to purchase from a competitor on the ground that they were

under contract to purchase the yeast of such manufacturer, with the effect that competition in the sale of yeast had been and was substantially lessened :

*Held*, That such contract constituted a violation of section 3 of the act of October 15, 1914.

### COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it that the Fleischmann Co., hereinafter referred to as respondent, has been, and is, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Fleischmann Co., is a corporation, organized and existing under and by virtue of the laws of the State of Ohio, having its principal office and place of business at the city of Cincinnati, in said State, and is now, and was at all times hereinafter mentioned, engaged in manufacturing and selling compressed yeast, hereinafter referred to as yeast, in commerce among the several States and Territories of the United States.

PAR. 2. That, with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now, and for more than a year last past has been, systematically, and on a large scale, giving and offering to give to operative bakers using yeast, both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to purchase or contract to purchase from the respondent, yeast, without other consideration therefor, in quantities larger than required under the particular circumstances for proper sample or demonstration purposes.

PAR. 3. That, with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now, and for more than a year last past has been, systematically, and on a large scale,

giving and offering to give, to operative bakers using yeast, both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to purchase or contract to purchase yeast from the respondent, and to employees of such users of yeast, as an inducement to said employees to influence their respective employers to purchase or contract to purchase yeast from the respondent, gratuities, such as liquor, cigars, meals, and other personal property, and in some instances money.

PAR. 4. That, with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now, and for more than a year last past has been, systematically, and on a large scale, giving and offering to give operative bakers using yeast, both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to purchase or contract to purchase yeast from the respondent, and to employees of such users of yeast, as an inducement to said employees to influence their respective employers to purchase or contract to purchase yeast from the respondent, Christmas presents and special holiday presents; that said presents are charged on the respondent's books of account to a "Christmas and special holiday" account, and include, among other things, liquors, cigars, silverware, and in some instances money.

PAR. 5. That, with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now, and for more than a year last past has been systematically, and on a large scale, providing entertainment for operative bakers using yeast, both its customers and prospective customers, and for their employees, as an inducement to purchase or contract to purchase yeast, or to influence the purchase of yeast from respondent; that said entertainment is furnished to said users of yeast, and their employees, by respondent's route drivers and selling agents; that the expense of said entertainment is charged on the respondent's books of account as "Route expenses," and that said entertainment includes, among other things, money for entertainment purposes, meals, drinks, cigars, and theater tickets.

PAR. 6. That, with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast the respondent is now, and for more than a year last past has been, systematically contributing sums of money to funds raised by numerous associations of operative bakers, known as "Master Bakers' Associations," to defray expenses of periodic conventions held by said associations in various parts of the United States; that such contributions range from \$10 to \$1,000, dependent on the relative size and importance of the association, and are charged on the books of account of the respondent as "Convention expenses," and are made to obtain and retain the patronage of said operative bakers.

PAR. 7. That, with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now, and for more than a year last past has been, systematically, and on a large scale, providing entertainment for operative bakers attending the association conventions referred to in paragraph 6 above; that said entertainment is furnished by agents of the respondent sent to said conventions, and the expense thereof is charged on the books of the respondent as "Convention expenses," and is provided to obtain and retain the patronage of said operative bakers, and includes, among other things, cigars, drinks, meals, theater tickets, and automobile rides.

PAR. 8. That, with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now, and for more than a year last past has been systematically, and on a large scale, providing entertainment to operative bakers using yeast, both its customers and prospective customers; that such entertainment is furnished to said users of yeast at the respondent's principal distributing centers by its representatives known as "Resident sales agents"; that the expense of such entertainments is charged on the books of account of the respondent as "Sales agents expense," and is made to obtain and retain the patronage of said operative bakers, and includes, among other things, cigars, drinks, meals, theater tickets and automobile rides.

PAR. 9. That, with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent is now, and for more than a year last past has been, systematically delivering and offering to deliver to operative bakers using yeast, as an inducement for said users to continue or to enter into contracts of purchase of yeast from the respondent, yeast for various periods without any immediate charge therefor, the price of such yeast so delivered being included and distributed in the price of yeast delivered during the term of a contract then in existence or made subsequent to the period of such delivery of yeast for which no immediate charge is made.

PAR. 10. That, with the effect of stifling and suppressing competition in interstate commerce, in the manufacture and sale of yeast, the respondent is now, and for more than a year last past has been, systematically making and offering to make to operative bakers using yeast, as an inducement for said users to continue or enter into contracts of purchase of yeast from the respondent, payments of cash, the amount of said cash payments being included and distributed in the price of yeast delivered under a contract entered at the time of said payment of cash.

PAR. 11. That, with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent has unfairly interfered with its competitors in the conduct of their respective businesses, more particularly as follows:

(a) By removing or attempting to remove competitors' trial sample yeast from the possession of users of yeast, by substituting or attempting to substitute its own yeast therefor, or by purchasing or attempting to purchase from said users of yeast such competitors' trial samples;

(b) by purchasing or offering to purchase, or by substituting or offering to substitute, its own yeast for competitors' yeast in the hands of competitors' customers; and

(c) by following and trailing the delivery and sales agents of its competitors as said agents make the rounds of said competitors' customers and prospective customers, with the object of hindering and embarrassing such agents in the sale and delivery of yeast and the transaction of business incident thereto.

PAR. 12. That, with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, certain agents and representatives of respondents have, at divers times, made misrepresentations to the trade as to the methods pursued by its competitors in the transaction of their business.

PAR. 13. That, with the effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of yeast, the respondent has concealed its control of, and affiliation with, a yeast company, to wit, the Bakers & Consumers' Compressed Yeast Co., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, and having its principal office and place of business in the city of New York, State of New York; and respondent has permitted the said company to be held out and advertised as wholly independent and without connection with the respondent, and has directed the efforts and business of said company to the acquisition of certain trade which respondent can not acquire or certain trade which respondent is in danger of losing.

## II.

And the Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that the Fleischmann Co., hereinafter referred to as respondent, has violated and is violating the provisions of section 8 of the act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," hereinafter referred to as the Clayton Act, issues this further complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Fleischmann Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, having its principal office and place of business at the city of Cincinnati, in said State, and is now, and was at all times hereinafter mentioned, engaged in manufacturing and selling compressed yeast, hereinafter referred to as yeast, in commerce among the several States and Territories of the United States.

PAR. 2. That the respondent, Fleischmann Co., for several years last past, in the course of interstate commerce, in vio-



lation of section 3 of the Clayton Act, has sold and made contracts for sale, and is now selling and making contracts for sale, of large quantities of yeast, for use, consumption, and resale within the United States, and has fixed, and is now fixing, the price charged therefor, or discount from, or rebate upon such price, on the condition, agreement, or understanding that the purchasers thereof shall not use or deal in the goods, wares, merchandise, supplies, or other commodities of a competitor or competitors of respondent, and that the effect of such sales and contracts for sale, or such conditions, agreements, or understandings may be and is to substantially lessen competition and to tend to create a monopoly in the yeast industry.

#### SUPPLEMENTARY COMPLAINT.

### III.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Fleischmann Co., hereinafter referred to as respondent, has violated and is violating the provisions of section 2 of the act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," hereinafter referred to as the Clayton Act, issues this further complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Fleischmann Co., is a corporation organized and existing under and by virtue of the laws of the State of Ohio, having its principal office and place of business at the city of Cincinnati, in said State, and is now and was at all times hereinafter mentioned, engaged in manufacturing and selling compressed yeast, hereinafter referred to as yeast, in commerce among the several States and Territories of the United States.

PAR. 2. That the respondent, Fleischmann Co., for several years last past, in the course of interstate commerce, in violation of section 2 of the Clayton Act, has discriminated in price, and is now discriminating in price, between different purchasers of yeast, which yeast is sold for use,

consumption, or resale, within the United States or the territories thereof, or the District of Columbia, and that the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in the yeast industry.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaints herein, wherein it is alleged that it had reason to believe that the above-named respondent, the Fleischmann Co., has been, and now is, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and has been, and now is, discriminating in prices in the course of interstate commerce between different purchasers of compressed yeast in the same or different localities, and has been, and now is, making contracts in the course of interstate commerce, for the sale of compressed yeast to operative bakers on the condition, agreement, or understanding that said operative bakers shall not purchase compressed yeast from competitors of respondent, in violation of sections 2 and 3, respectively, of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and that a proceeding by it in respect to the allegations herein set forth, would be to the interest of the public and fully stating its charges in this respect, and the respondent having entered its appearance by Henry A. Wise, its attorney, and having stipulated of record that the Commission might forthwith proceed to make its findings and order disposing of these proceedings, the Commission makes this report and findings as to the facts, and conclusions.

### FINDINGS AS TO THE FACTS.

#### I.

PARAGRAPH 1. That the Fleischmann Co. is a corporation organized, existing, and doing business under and by virtue

of the laws of the State of Ohio, having its principal office and place of business at the city of Cincinnati, in said State, and is now, and was at all times hereinafter mentioned, engaged in manufacturing and selling compressed yeast, hereinafter referred to as yeast, in commerce among the several States and Territories of the United States.

PAR. 2. That the respondent has, for more than a year last past, systematically given and offered to give, to operative bakers using compressed yeast, both its customers and prospective customers and its competitors' customers and prospective customers, as an inducement to purchase or contract to purchase from respondent, yeast, without other consideration therefor, in quantities larger than required under the particular circumstances for proper sample or demonstration purposes.

PAR. 3. That the respondent has, for more than a year last past, made a systematic practice of giving and offering to give to operative bakers using compressed yeast, both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to purchase or contract to purchase yeast from the respondent, and to employees of such users of yeast as an inducement to said employees to influence their respective employers to purchase or contract to purchase yeast from the respondent, gratuities such as liquors, cigars, meals, and other personal property, and in some instances, money.

PAR. 4. That the respondent has, for more than a year last past, systematically given and offered to give to operative bakers using compressed yeast, both its customers and prospective customers and its competitors' customers and prospective customers, as an inducement to purchase or contract to purchase yeast from the respondent, and to employees of such users of yeast, as an inducement to said employees to influence their respective employers to purchase or contract to purchase yeast from the respondent, Christmas presents and special holiday presents, such as liquors, cigars, silverware, and in some instances, money.

PAR. 5. That the respondent has, for more than a year last past, systematically provided entertainment for operative bakers using compressed yeast, both its customers and pros-

pective customers, as an inducement to purchase or contract to purchase yeast from the respondent, and to employees of such users of yeast, as an inducement to said employees to influence their respective employers to purchase or contract to purchase yeast from the respondent, and that such entertainment includes, among other things, meals, drinks, cigars, theater tickets, other articles of personal property, and in some instances money.

PAR. 6. That the respondent has, for more than a year last past, systematically made contributions of sums of money to funds raised by numerous associations known as "bakers' associations," composed of operative and boss bakers, both its customers and prospective customers, ranging from \$10 to \$1,800, depending on the relative size and importance of the association, to defray expenses of periodic conventions held by said associations in various parts of the United States; that such contributions were and have been made for the purpose of obtaining and retaining the patronage of said operative bakers; that in the year 1915 the aggregate amount of such contributions was \$26,601.45; that in the year 1916 the aggregate amount of such contributions was \$26,456.43; that in the year 1917 the aggregate amount of such contributions was \$17,034.67; that such sums were distributed throughout the various States and Territories of the United States; and that such contributions have operated in the interest of the good will of respondent's business.

PAR. 7. That the respondent is now, and for more than a year last past has been, systematically providing entertainment to operative and boss bakers using compressed yeast, both its customers and prospective customers, attending the association conventions referred to in paragraph 6 above; that said entertainment is furnished by agents of respondent sent to said conventions; that the expense thereof is charged on the books of respondent as "convention expenses," and is provided to obtain and retain the patronage of said operative and boss bakers, and includes, among other things, cigars, drinks, meals, theater tickets, and automobile rides.

PAR. 8. That the respondent has, for more than a year last past, systematically provided entertainment to operative bakers using compressed yeast, both its customers and pro-

spective customers; that such entertainment was furnished to said users of yeast at the respondent's principal distributing centers by its representatives known as "sales agents"; that the expense of such entertainments is charged on the books of account of the respondent as "sales agents' expenses," and is made to obtain and retain the patronage of said operative bakers, and includes, among other things, cigars, drinks, meals, theater tickets, and automobile rides.

PAR. 9. That the respondent has, for more than year last past, systematically delivered and offered to deliver to operative bakers using compressed yeast, as an inducement for said users of yeast to continue, or to enter into, contracts of purchase of yeast from the respondent, yeast for various periods without any immediate charge therefor, the price of such compressed yeast so delivered being included and distributed in the price of yeast delivered during the term of a contract then in existence or made subsequent to the period of such delivery of yeast for which no immediate charge is made.

PAR. 10. That the respondent has, for more than a year last past, systematically made and offered to make to operative bakers using yeast, as an inducement for said users of yeast to continue, or to enter into, contracts of purchase of yeast from the respondent, payments of cash, the amount of said cash payments being included and distributed in the price of yeast delivered under a contract entered at the time of said payment of cash.

PAR. 11. (a) That occasionally respondent's representatives have removed, or attempted to remove, competitors' trial samples of compressed yeast from the possession of operative bakers using yeast by substituting or attempting to substitute respondent's yeast therefor, or by purchasing or attempting to purchase from said operative bakers such competitors' trial samples.

(b) That occasionally respondent's representatives have purchased or offered to purchase, or have substituted or offered to substitute, respondent's compressed yeast for competitors' compressed yeast in the hands of competitors' customers.

(c) That occasionally respondent's representatives have followed up competitors' representatives as the latter made

the rounds of competitors' customers and prospective customers, with the object of hindering and embarrassing competitors' agents in the sale and delivery of yeast, and the transaction of business incident thereto.

PAR. 12. That at divers times certain agents and representatives of the respondent have made misrepresentations to the trade as to the methods pursued by its competitors in the transaction of said competitors' business.

PAR. 13. That the respondent for more than a year last past has concealed its control of, and affiliation with, a yeast company, to wit, the Bakers & Consumers Compressed Yeast Co., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having its principal office and place of business in the city of New York, State of New York; that the respondent has permitted the said Bakers & Consumers Compressed Yeast Co. to be held out and advertised as wholly independent and without connection with the respondent, and has directed the efforts and business of said Bakers & Consumers Compressed Yeast Co. to the acquisition of certain trade which respondent was in danger of losing.

## II.

PARAGRAPH 1. That from October 1, 1915, until the present time, the respondent has sold practically 90 per cent of the compressed yeast used by commercial bakers, including hotels, restaurants, and institutions, in the United States, and that upwards of 30 per cent of such bakers have been under contract with respondent for the purchase of compressed yeast, which amounts to approximately 75 per cent of the bakers' yeast sold by the respondent, and that from October 1, 1905, until May 1, 1917, the contract used by respondent was in the form as follows:

Form 883 (2 '13 10M).

The undersigned purchaser hereby agrees, in consideration of the reduced price at which the goods named herein are sold, to buy of The Fleischmann Co., which agrees to sell to the undersigned purchaser upon the terms and conditions hereinafter stipulated, all the compressed yeast required to be used for                      own and sole use at the baking establishment of the undersigned purchaser for and during the term of                      year ending                      191                      , at the rate of thirty-five cents per pound delivered by the seller on terms of cash, The Fleisch-

100-443887-100

[illegible]

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— *Journal of the American Medical Association*, 1967, 201: 1031-1032.

1. *Chlorophyll *a** and *Chlorophyll *b** were determined by the method of Arar and Collins (1971). The *Chlorophyll *a** and *Chlorophyll *b** contents were expressed as  $\mu\text{g g}^{-1}$  of dry weight.

[illegible]

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sent 3,147 commercial bakers, hotels, restaurants, and institutions; that in making all of such contracts, respondent has entered into the same in the hope and with the expectation that the baker making such contract would live up to the same, and it is the fact that 90 per cent of such bakers entering into both forms of such contracts have lived up to the same and have taken their entire requirements of yeast from the respondent; that there are approximately four thousand of respondent's customers who are now under contract in the form adopted May 1, 1917, as aforesaid. That of respondent's customers east of the Mississippi River under contract with respondent as aforesaid, substantially all of them have been solicited by agents of competitors for the purpose of having said customers disregard their contracts and purchase compressed yeast from respondent's competitors; that in a large number of instances where customers under contract have been so solicited they have declined to purchase yeast from competitors of respondent, giving as their reason that they were under contract with respondent.

### III.

PARAGRAPH 1. That for more than one year last past respondent has sold compressed yeast to operative bakers on the basis of—

	Cents per pound.
Bakers using 500 pounds or more, per week (which price is called the wholesale price; there have been and are a few customers who used or use from 4,000 to 12,000 pounds per week who have received, or are receiving, a discount of from 2% to 5% from this price for cash payment, of monthly bills, within 10 days)-----	16
Bakers using from approximately 300 to 500 pounds per week..	17
Bakers using approximately from 200 to 300 pounds per week..	18-19
Bakers using approximately from 100 to 200 pounds per week..	19-20
Bakers using approximately from 60 to 100 pounds per week..	21-22½
Bakers using approximately from 30 to 60 pounds per week..	25
Bakers using under 25 pounds per week.....	25-25½

largely depending on remoteness of point of delivery. The above figures are the figures applying in the territory of the United States east of the Rocky Mountains.



That owing to competition in various localities it has deviated from such basic prices in order to retain the patronage of its customers by reducing its prices to them to meet the price of its competitors, and in the event that such reduction in price did not result in the retention of the business of said customers, it has, in a number of cases, reduced its prices to a price below that offered to such customers by such competitors; and in many cases where, as a result of such competition, its customers have abandoned their contracts with respondent, it has reduced its prices to such customers to meet the price of such competitors to obtain said customers' business.

#### CONCLUSIONS.

That the methods of competition, as set forth in the foregoing findings as to the facts in Division I, paragraphs 2 to 13, inclusive, and each and all of them are, in the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

That the contracts for sale used by the respondent, as set forth in the foregoing findings as to the facts, in Division II, paragraph 1, are made on the condition, agreement, or understanding that the purchaser shall purchase his entire requirement of compressed yeast from respondent and shall not purchase compressed yeast from a competitor, and the effect thereof may be to substantially lessen competition or tend to create a monopoly in the sale of compressed yeast; that the use of such contracts is in violation of section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

That the discriminations in prices in so far as they are admitted by respondent to be below the prices offered by its competitors, as set forth in the foregoing findings as to the facts in Division III, paragraph 1, are not made on account of differences in the grade, quality or quantity of the com-

modity sold, nor do such discriminations make due allowance for difference in the cost of selling or transportation, and are not made in good faith to meet competition, and the effect of such discriminations may be to substantially lessen competition or tend to create a monopoly in the sale of compressed yeast; that such discriminations are made in violation of section 2 of an act of Congress approved October 15, 1914, entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaints herein, and the respondent, the Fleischmann Co., having entered its appearance by Henry A. Wise, its attorney, and having stipulated of record that the Commission may forthwith proceed to make its findings as to the facts in these proceedings, and issue its order disposing of the same, and the Commission, on the date hereof, having made and filed a report containing its findings as to the facts, and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and has violated sections 2 and 3, respectively, of an act of Congress approved October 15, 1914, entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which said report is hereby referred to and made a part hereof. Therefore

*It is ordered,* That the respondent, the Fleischmann Co., its officers and agents, cease and desist from—

(1) Giving, or offering to give, compressed yeast without any consideration therefor, to operative bakers, both its customers and prospective customers and its competitors' customers and prospective customers, in quantities larger than required under the particular circumstances for proper sample or demonstration purposes.

(2) Giving, or offering to give, operative bakers using compressed yeast, both its customers and prospective customers and its competitors' customers and prospective customers, their agents, servants, and employees, as an induce-

ment for such operative bakers to purchase or contract to purchase yeast from the respondent, gratuities such as liquors, cigars, meal and other personal property, or money.

(3) Giving, or offering to give, operative bakers using compressed yeast, both its customers, prospective customers, and its competitors' customers and prospective customers, their agents, servants, and employees, as an inducement for said operative bakers to purchase or contract to purchase yeast from the respondent, Christmas presents and special holiday presents, such as liquor, cigars, silverware, or money.

(4) Providing entertainment, including among other things, meals, drinks, cigars, theater tickets, or money, for operative bakers using compressed yeast, both its customers and prospective customers, their agents, servants, and employees, as an inducement for said operative bakers to purchase, or contract to purchase, yeast from the respondent.

(5) Making contributions of sums of money to funds raised by associations known as "bakers associations," composed of operative and boss bakers, both its customers and prospective customers, for the purpose of obtaining and retaining the patronage of said operative bakers: *Provided, however,* That nothing in this paragraph shall be construed to prevent respondent from making reasonable contributions to such associations for educational and scientific purposes as relates to the use of compressed yeast.

(6) Providing entertainment, including, among other things, cigars, drinks, meals, theater tickets, and automobile rides, to operative and boss bakers using compressed yeast, both its customers and prospective customers, attending the association conventions referred to in paragraph 5 above, for the purpose of obtaining and retaining the patronage of said operative and boss bakers.

(7) Providing entertainment, including among other things, cigars, drinks, meals, theater tickets, and automobile rides, to operative bakers using compressed yeast, both its customers and prospective customers, at the respondent's principal distributing centers by its representatives known as "sales agents," for the purpose of obtaining and retaining the patronage of said operative bakers: *Provided, however,* That nothing in this paragraph shall be construed to prohibit respondent from furnishing reasonable entertainment to op-

erative bakers visiting its manufacturing plants and laboratories.

(8) Delivering, or offering to deliver, as an inducement to operative bakers using a compressed yeast to continue or to enter into contracts of purchase of yeast from respondent, quantities of such yeast to said operative bakers without making any immediate charge therefor, and including and distributing the price for the same in the price of yeast delivered during the term of a contract then in existence, or made subsequent to the period of delivery of yeast for which no immediate charge is made.

(9) Making, or offering to make, as an inducement for operative bakers using compressed yeast to continue or to enter into contracts of purchase of yeast from the respondent, payments of cash, the amount of said cash payments being included and distributed in the price of yeast delivered under a contract entered into at the time of said payment of cash.

(10) (a) Removing, or attempting to remove, competitors' trial samples of compressed yeast from the possession of operative bakers using yeast, by substituting or attempting to substitute respondent's yeast therefor, or by purchasing or attempting to purchase from said operative bakers, such competitors' trial samples.

(b) Purchasing, or offering to purchase, or substituting or offering to substitute respondent's compressed yeast for competitors' compressed yeast in the possession of competitors' customers.

(c) Following up competitors' representatives as the latter make their rounds of their customers and prospective customers with the object of hindering and embarrassing competitors' agents in the sale or delivery of compressed yeast and the transaction of business incident thereto.

(11) Making misrepresentations to the trade as to the methods pursued by respondent's competitors in the transaction of said competitors' business.

(12) Concealing its control of, and affiliation with, a yeast company known as the Bakers & Consumers Compressed Yeast Co., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having its

principal office and place of business in the city of New York, State of New York, and permitting said Bakers & Consumers Compressed Yeast Co. to be held out and advertised as wholly independent and without connection with the respondent, or directing the efforts and business of said Bakers & Consumers Compressed Yeast Co. to the acquisition of certain trade which respondent is in danger of losing.

(13) Making a sale or contract for sale of compressed yeast for use, consumption, or resale within the United States, or any Territory thereof, or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the purchaser thereof shall purchase his entire requirement of compressed yeast from the Fleischmann Co. and shall not purchase compressed yeast from a competitor or competitors of said Fleischmann Co.

(14) Discriminating, either directly or indirectly, in territories where the Fleischmann Co. and its competitors are doing business, in price between different purchasers of compressed yeast, which commodity is sold for use, consumption, or resale within the United States, or any Territory thereof, or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where such discriminations in prices, if made, would be below the price or prices of a competitor or competitors of the Fleischmann Co. in such competitive territory.

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### FEDERAL TRADE COMMISSION v. ESSEX VARNISH COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 75.—April 15, 1918.

#### SYLLABUS.

Where a corporation engaged in the manufacture and sale of varnish and kindred products gave and offered to give to employees of customers and of competitors' customers, in some instances without

the knowledge and consent of their employers, gratuities, entertainment, and money, as an inducement for them (a) to influence their employers to purchase its goods or to refrain from dealing with its competitors, and (b) to adulterate and spoil its competitors' products:

*Held*, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Essex Varnish Co., hereinafter referred to as respondent, has been, for more than a year last past, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof, would be to the interest of the public issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the Essex Varnish Co., is a corporation, organized and existing, and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place of business at the city of Newark, in said State, and is now and for more than one year last past has been engaged in manufacturing and selling varnish, lacquers, and japans throughout the States and Territories of the United States, and that at all times hereinafter mentioned, the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of varnish, lacquers, and japans, the respondent, for more than one year last past, has been, systematically and on a large scale, giving and offering to give, to employees of both its customers and prospective customers and its competitors' customers and prospective cus-

tomers, as an inducement to influence their employers to purchase or contract to purchase from the respondent, varnish, lacquers, and japans, without other consideration therefor, gratuities such as liquor, cigars, meals, theater tickets, valuable presents, and entertainment.

PAR. 3. That, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of varnish, lacquers, and japans, the respondent, for more than one year last past, has been, systematically and on a large scale, secretly paying and offering to pay, to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge and consent of their employers, large sums of money as an inducement to influence their said employers to purchase or contract to purchase from the respondent, varnish, lacquers, and japans, or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondent.

PAR. 4. That, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of varnish, lacquers, and japans, the respondent has, for more than one year last past, secretly and surreptitiously paid and offered to pay employees of both its customers and prospective customers and its competitors' customers and prospective customers, without the knowledge and consent of their employers, large sums of money to adulterate and spoil for their proper uses varnish, lacquers, and japans sold or offered for sale by its competitors to such customers.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above named respondent, Essex Varnish Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and

that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered its appearance and having filed its answer admitting that within the last three years it has done and performed the acts as alleged in the said complaint, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to facts, and its order disposing of this proceeding without the introduction of testimony in support of the same and waiving any and all right to the introduction of such testimony, the Commission makes this report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Essex Varnish Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its home office located at the city of Newark, in the said State of New Jersey, now and for more than one year last past engaged in the business of manufacturing and selling varnish, lacquers, japans, and kindred products, generally in commerce throughout the States and Territories of the United States in direct competition with other persons, firms, copartnerships and corporations manufacturing and selling like products.

PAR. 2. That within the last three years the respondent has given and offered to give employees of both its customers and prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent, varnish, lacquers, japans, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, gratuities consisting of liquors, cigars, meals, theater tickets, and other personal property.

PAR. 3. That within the last three years the respondent has given and offered to give employees of both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to influence



their employers to purchase or to contract to purchase from the respondent, varnish, lacquers, japans, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, entertainment consisting of amusements and diversions of various kinds and description.

PAR. 4. That within the last three years the respondent has given and offered to give employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge and consent of their employers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent, varnish, lacquers, japans, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, large sums of money.

PAR. 5. That within the last three years the respondent has given and offered to give employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge and consent of their employers, large sums of money to adulterate and spoil for their proper uses, varnish, lacquers, japans, and kindred products, sold or offered for sale by its competitors to such customers.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to facts in paragraphs 2, 3, 4, 5 and each and all of them, are under the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent having entered its appearance and filed its answer admitting that it has in the

last three years done and performed the acts as alleged and contained in the said complaint, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof. Now, therefore,

*It is ordered*, that the respondent, Essex Varnish Co., of Newark, N. J., and its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly:

1. Giving or offering to give employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent varnish, lacquers, japans, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, gratuities, such as liquor, cigars, meals, theater tickets, valuable presents, and other personal property.

2. Giving or offering to give employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent varnish, lacquers, japans, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, entertainment, consisting of amusements or diversions of any kind whatsoever.

3. Giving or offering to give employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, as an inducement to influence their

employers to purchase or to contract to purchase from the respondent, varnish, lacquers, japans, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, money.

4. Giving or offering to give employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, to adulterate and spoil for their proper uses varnish, lacquers, japans, and kindred products, sold or offered for sale by its competitors to such customers, money.

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## FEDERAL TRADE COMMISSION *v.* STANDARD CAR EQUIPMENT CO. AND STANDARD CAR CONSTRUCTION CO.

AMENDED COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 9.—April 16, 1918.

### SYLLABUS.

Where two corporations engaged in the manufacture, sale, and lease of tank cars used for the transportation of oil, alcohol, acids, and other liquid commodities, for the purpose and with the effect of unduly harassing and embarrassing competitors, maliciously enticed away employees of such competitors; and,

Where one of such corporations, engaged in the business of leasing such tank cars, acquired from a person then in its employ but formerly employed by a competitor in a confidential capacity, confidential information of said competitor, consisting among other things of a list of customers and prospective customers, and data pertaining to their leases and prospective leases, and used the same in competition with said competitor:

*Held*, That such enticement of employees and such acquisition and use of confidential information constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the Standard Car Equipment Co. and the Standard Car Construction Co., hereinafter referred to as respondents, have been, and

are, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this amended complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the Standard Car Equipment Co., one of the respondents, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, having its principal office and place of business at the city of Philadelphia, State of Pennsylvania, and is now, and was at all times hereinafter mentioned, engaged in commerce among the several States and Territories of the United States, in leasing tank cars used for the transportation of oil, alcohol, acids, etc.; that the other respondent, the Standard Car Construction Co., is a corporation organized and created under the laws of the State of Delaware, and is engaged, and was at all times hereinafter mentioned engaged, in commerce among the several States and Territories of the United States in the manufacture and sale of tanks and tank cars used for the transportation of oil, alcohol, acids, etc.; that the Standard Car Equipment Co. wholly owns and controls the capital stock of said Standard Car Construction Co., and by reason of such ownership and control, the same directors are elected on both boards of directors and the members thereof operate and cooperate in the management and in the operation of both concerns.

PAR. 2. That, with the effect of stifling and suppressing competition in interstate commerce in the leasing of tank cars, the Standard Car Equipment Co. is now and for more than a year last past has been systematically and on a large scale inducing employees of one of its competitors to leave their employment by offering such employees employment with respondent, and that said employment with respondent is and has been given at times when respondent had no occasion for the service of many of such employees; that the Standard Car Construction Co., the other respondent, en-

gaged in the manufacture and sale of tank cars for the Standard Car Equipment Co. as aforesaid and for other customers, and being operated and controlled as aforesaid, has been for a long time past, and is now systematically, and on a large scale, inducing employees of its competitors to leave their employment by offering such employees employment with said respondent, many of said employees having been in the service of said competitor for many years and were highly skilled in and about the business of said competitor, with the intent and purpose of injuring the business of said competitor, and demoralizing and breaking down the organization of said competitor's employees to such an extent that the output of competitor's plant was and has been greatly and materially reduced, thereby suppressing and stifling competition in the manufacture and sale of tanks and tank cars as aforesaid.

PAR. 3. That, with the effect of stifling and suppressing competition in interstate commerce in the leasing of tank cars, the Standard Car Equipment Co., one of the respondents, is now, and for more than a year last past has been, making representations to users or prospective users of tank cars, that it is closely affiliated with one of its competitors; that the respondent and this competitor have common financial connections and that it and said competitor will soon be under one control and management, said representations being made, at times, in connection with the submittal of blue-print specifications for tank cars, said specifications embodying certain features theretofore generally associated in the trade with said competitor's product, when, in truth and in fact, the respondent and said competitor are now, and have, for a year last past, been independent concerns and in no way connected financially or otherwise.

PAR. 4. That the Standard Car Equipment Co., one of the respondents, has acquired information of trade secrets and business confidences of a certain competitor from persons heretofore employed by said competitor but now employed by the respondent, such information consisting, among other things, of a list of customers and data pertaining to such customers' leases, etc., and that the respondent is now using said information, thus acquired, in competition with said competitor.

**REPORT, FINDINGS AS TO THE FACTS, AND ORDER.**

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondents, Standard Car Equipment Co., and Standard Car Construction Co., have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect, and the respondents having entered their appearance by H. B. Gill, their attorney, and the Commission having offered testimony in support of its charges in said complaint, and the respondents having offered testimony in denial of said charges in said complaint, and the attorneys for the Commission and the respondents having submitted their briefs as to the law and the facts in said proceeding, and the same having been argued before an examiner of the Commission, and the said examiner having made and presented to the Commission his proposed findings as to the facts, and the respondents having entered exceptions to said examiner's proposed findings as to the facts, and said exceptions having been duly argued before the Commission by counsel for the Commission and the respondents, the Commission makes this report and findings as to the facts and conclusions.

**FINDINGS AS TO THE FACTS.**

**PARAGRAPH 1.** That the Standard Car Equipment Co., one of the respondents, is a corporation organized and existing under and by virtue of the laws of the State of Delaware having its principal office and place of business at the city of Philadelphia, State of Pennsylvania; that the Standard Car Construction Co. is a corporation organized and existing under by virtue of the laws of the State of Delaware, having its works and place of business at the city of Masury, State of Ohio; that said corporations are now and were at

all times hereinafter mentioned, engaged in commerce among the several States and Territories of the United States, in the manufacture, sale, and leasing of tank cars, used for the transportation of oil, alcohol, acids and other liquid commodities.

PAR. 2. That within three years last past respondents, for the purpose and with the effect of unduly harassing and embarrassing a competitor in the manufacture, sale, and leasing of tank cars in commerce as aforesaid, maliciously enticed away employees of said competitor.

PAR. 3. That the Standard Car Equipment Co., one of the respondents, within the three years last past acquired information of trade secrets and business confidences of a competitor through and by a person formerly employed in a confidential capacity by said competitor, but now employed by the respondent, such information consisting, among other things, of a list of customers and prospective customers and data pertaining to such customers' leases and prospective leases, and that said respondent has used and is now using said information, thus acquired, in competition with said competitor.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 2 and 3, and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint, herein, and the respondents, Standard Car Equipment Co. and Standard Car Construction Co., having entered their appearance by H. B. Gill, their attorney, and the Commission having offered testimony in support of its charges in the said complaint, and the respondents having offered testimony in the denial of said charges in said complaint, and the attorneys for the Commission and the re-

modity sold, nor do such discriminations make due allowance for difference in the cost of selling or transportation, and are not made in good faith to meet competition, and the effect of such discriminations may be to substantially lessen competition or tend to create a monopoly in the sale of compressed yeast; that such discriminations are made in violation of section 2 of an act of Congress approved October 15, 1914, entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaints herein, and the respondent, the Fleischmann Co., having entered its appearance by Henry A. Wise, its attorney, and having stipulated of record that the Commission may forthwith proceed to make its findings as to the facts in these proceedings, and issue its order disposing of the same, and the Commission, on the date hereof, having made and filed a report containing its findings as to the facts, and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and has violated sections 2 and 3, respectively, of an act of Congress approved October 15, 1914, entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which said report is hereby referred to and made a part hereof. Therefore

*It is ordered*, That the respondent, the Fleischmann Co., its officers and agents, cease and desist from—

(1) Giving, or offering to give, compressed yeast without any consideration therefor, to operative bakers, both its customers and prospective customers and its competitors' customers and prospective customers, in quantities larger than required under the particular circumstances for proper sample or demonstration purposes.

(2) Giving, or offering to give, operative bakers using compressed yeast, both its customers and prospective customers and its competitors' customers and prospective customers, their agents, servants, and employees, as an induce-



- (a) sold the same to dealers upon the agreement or understanding that they should resell the same at a fixed price, and
- (b) refused to sell the same to dealers who resold it at less than the price so fixed:

*Held*, That a scheme of price maintenance, substantially as described, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Chester Kent & Co., hereinafter referred to as respondent, has been, and is, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Chester Kent & Co., is now and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business in the city of Boston, in said State, and is now and for more than two years last past has been engaged in the business of a wholesale chemist, selling and distributing at wholesale, various brands of proprietary medicines to dealers throughout the States and Territories of the United States, and the District of Columbia,

PAR. 2: That the respondent, Chester Kent & Co., as a means of procuring the trade of dealers and of enlisting their active cooperation in encouraging the sale of its medicines and for the purpose of eliminating competition in price among the dealers of its medicines and thereby depriving dealers of their right to sell such medicines at such prices as they may deem adequate and warranted by their selling efficiency and for other purposes has adopted and maintains a system of fixing a schedule of standard prices at which the medicines sold by it shall be resold by the purchasers thereof,

erative bakers visiting its manufacturing plants and laboratories.

(8) Delivering, or offering to deliver, as an inducement to operative bakers using a compressed yeast to continue or to enter into contracts of purchase of yeast from respondent, quantities of such yeast to said operative bakers without making any immediate charge therefor, and including and distributing the price for the same in the price of yeast delivered during the term of a contract then in existence, or made subsequent to the period of delivery of yeast for which no immediate charge is made.

(9) Making, or offering to make, as an inducement for operative bakers using compressed yeast to continue or to enter into contracts of purchase of yeast from the respondent, payments of cash, the amount of said cash payments being included and distributed in the price of yeast delivered under a contract entered into at the time of said payment of cash.

(10) (a) Removing, or attempting to remove, competitors' trial samples of compressed yeast from the possession of operative bakers using yeast, by substituting or attempting to substitute respondent's yeast therefor, or by purchasing or attempting to purchase from said operative bakers, such competitors' trial samples.

(b) Purchasing, or offering to purchase, or substituting or offering to substitute respondent's compressed yeast for competitors' compressed yeast in the possession of competitors' customers.

(c) Following up competitors' representatives as the latter make their rounds of their customers and prospective customers with the object of hindering and embarrassing competitors' agents in the sale or delivery of compressed yeast and the transaction of business incident thereto.

(11) Making misrepresentations to the trade as to the methods pursued by respondent's competitors in the transaction of said competitors' business.

(12) Concealing its control of, and affiliation with, a yeast company known as the Bakers & Consumers Compressed Yeast Co., a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having its

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above named respondent, Chester Kent & Co. (Inc.), has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and has been and is violating the provisions of section 2 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," and fully stating its charges in this respect, and the respondent having entered its appearance by Tower, Talbot & Hiler, its attorneys, and having filed its answer denying that since the 26th day of December, A. D. 1917, it has done the acts alleged in the said complaint and having signed and filed an agreed statement of facts wherein it is stipulated and agreed that the Commission shall forthwith proceed upon such agreed statement of facts to make and enter its report, stating its findings as to the facts, and its order disposing of this proceeding without the introduction of testimony in support of the same and waiving any and all right to the introduction of such testimony, the Commission now makes its report and findings as to the facts and conclusions.

### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Chester Kent & Co. (Inc.), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business located at the city of Boston, State of Massachusetts, and is now and for more than two years last past has been engaged in selling and distributing at wholesale proprietary medicines to dealers throughout the States and Territories of the United States and the District of Columbia.

PAR. 2. That for more than one year prior to the 26th day of December, A. D. 1917, the respondent, Chester Kent & Co. (Inc.), sold a certain brand of proprietary medicine, to wit, vinol, to dealers upon the agreement or understanding that the same should be resold by the dealers at and for the price of \$1 a bottle.

PAR. 3. That for more than one year prior to the 26th day of December, A. D. 1917, the respondent, Chester Kent & Co. (Inc.), refused to and did not sell a certain brand of proprietary medicine, to wit, vinol, to dealers who resold the same for less than the price of \$1 a bottle.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 2, 3, and each and all of them are under the circumstances herein set forth unfair methods of competition in interstate commerce and in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein and the respondent having entered its appearance by Tower, Talbot & Hiler, its attorneys, and having filed its answer and agreed statement of facts wherein it is stipulated that the Commission shall forthwith proceed upon said agreed statement of facts to make and enter its report stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same and waiving any and all right to the introduction of such testimony, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which

said report is hereby referred to and made part hereof:  
Now, therefore,

*It is ordered* that the respondent Chester Kent & Co. (Inc.), of Massachusetts, and its officers, directors, agents, servants, and employees cease and desist from, directly or indirectly:

1. Indicating to dealers the prices for which its proprietary or patent medicines shall be resold;
2. Securing from dealers agreements to adhere to such prices;
3. Refusing to sell to dealers who fail to adhere to such prices;
4. Refusing to sell to dealers who fail to adhere to such prices upon the same terms as to dealers who do so adhere;
5. Furnishing or affording any advantage to dealers who adhere to such prices while refusing similar treatment to dealers who do not so adhere.

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## FEDERAL TRADE COMMISSION *v.* BLOCK & CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 33.—June 6, 1918.

### SYLLABUS.

Where a manufacturer for 24 years made and sold a salve under the trade name of "Mentholatium," which trade name had acquired a well-defined meaning and reputation with the purchasing public, and put such preparation up in paper cartons with said trade name prominently displayed thereon, and subsequently a competing manufacturer, with knowledge of these facts, began to make and sell a similar preparation, put its preparation up in cartons similar to those used by the original manufacturer, adopted the trade name "Mentholanum," displayed the same on such cartons, and advertised such preparation for similar uses, which simulation was calculated to, and did, deceive and mislead the purchasing public and cause them to believe that the later manufacturer's preparation was one and the same as the original:

*Held*, That the simulation of name and dress of goods, under the circumstances set forth, constituted an unfair method of competition, in violation of section 5 of the act of September 26, 1914.

## COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Block & Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Block & Co., is a corporation, organized, existing and doing business under and by virtue of the laws of New York, having its principal office and place of business at the city of Brooklyn, in said State, and is now, and was at all times hereinafter mentioned, engaged in the manufacture and sale of soaps, toilet and pharmacal preparations, among which is a mentholated petrolatum, to which it has applied the name "Mentholanum," and which is adopted and intended to be used in treating various ailments and diseases of the skin, tissues and muscles, and that such mentholanum is manufactured and sold at all times hereinafter mentioned by the respondent, in direct competition with manufacturers and dealers of similar preparations used for like purposes.

PAR. 2. That in the conduct of its business, the respondent, Block & Co., purchases the component ingredients used in the manufacture of mentholanum in various States and Territories in the United States, and transports the same through other States and Territories in and to the city of Brooklyn, State of New York, where they are assembled and made into such mentholanum, which is from there sold and shipped to dealers in different States and Territories of the United States and the District of Columbia, for resale to the public, and that there is continually, and has been at all times herein mentioned, a constant current of trade and commerce in said preparation between and among the vari-

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ous States and Territories of the United States and the District of Columbia, and more particularly from other States and Territories of the United States and the District of Columbia, to and through the city of Brooklyn, State of New York, and from there to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That the Metholatum Co., hereinafter referred to as the applicant, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at the city of Buffalo, in said State, and for 24-years last past has been engaged in the business of manufacturing and selling a preparation in the form of a salve, adapted for the use of treating different ailments and diseases of the skin, tissues and muscles, to which it has applied the trade name Mentholatum; that said preparation is sold by dealers in different States and Territories of the United States and the District of Columbia, in paper cartons, upon which Mentholatum is printed in large and distinct letters, and such trade name, through years of sale and advertising, has acquired a well defined meaning and reputation with the purchasing public, all of which is, and was, well known to the respondent.

PAR. 4. That the respondent, within the year last past, began the manufacture and sale of its preparation, as aforesaid, and with the purpose, intent, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of preparations similar to its, has adopted the trade name of Mentholanum, displaying the same in large and distinct letters upon the cartons in which the same is sold and which are similar to those used by the applicant herein, and advertises this preparation for uses similar to those in a like advertisement by the applicant; all of which simulation is designed and calculated to, and does, deceive and mislead the purchasing public and cause purchasers to believe that respondent's preparation is one and the same as that of the applicant herein.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, Block & Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect, and the respondent, having entered its appearance by Louis Klatzkie, its treasurer, duly authorized to act in the premises, and having filed its answer admitting that the matters and things alleged in the said complaint are true, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts, and its order disposing of this proceeding.

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Block & Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its home office located at the city of Brooklyn in the said State of New York, now and for more than one year last past engaged in the business of manufacturing and selling toilet and pharmacal preparations among which is a mentholated petrolatum to which it has applied the name Mentholanum, generally in commerce throughout the States and Territories of the United States and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That in the conduct of its business, Block & Co. have purchased the component ingredients used in manufacturing Mentholanum in various States and Territories of the United States, and the same are transported through said States and Territories to the city of Brooklyn, State of New York, and there are assembled and made into Mentholanum,



which is from there sold and shipped to the trade in different States and Territories of the United States and the District of Columbia.

PAR. 3. That the Mentholatum Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in the city of Buffalo, in said State, and for 24 years last past has been engaged in the business of manufacturing and selling a preparation in the form of a salve adapted for the use of treating different ailments and diseases of the skin, tissues, and muscles, to which it has applied the trade name Mentholatum; that said preparation is sold by dealers in different States and Territories of the United States and the District of Columbia in paper cartons, upon which "Mentholatum" is printed in large and distinct letters, and such trade name through years of sale and advertising has acquired a well-defined meaning and reputation by the purchasing public, all of which is, and was, well known to the respondent.

PAR. 4. That the respondent, within the year last past, began the manufacture and sale of its preparation as aforesaid and did adopt the trade name of Mentholatum, applying the same in large and distinct letters upon the cartons in which the same is sold and which are similar to those used by the Mentholatum Co., and advertises this preparation for uses similar to those in a like advertisement by the Mentholatum Co., all of which simulation is designed and calculated to, and does, deceive and mislead the purchasing public and cause purchasers to believe that respondent's preparation is one and the same as that of the Mentholatum product.

#### CONCLUSION.

That the method of competition set forth in the foregoing findings as to the facts in paragraph 4 is, under the circumstances therein set forth, an unfair method of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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## ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent having entered its appearance by Louis Klatzkie, its treasurer, duly authorized to act in the premises, and having filed its answer admitting that the matters and things alleged and contained in the said complaint are true, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and its order disposing of this proceeding; and the Commission having made and filed its report containing its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and is made a part hereof. Now, therefore,

*It is ordered*, that the respondent, Block & Co., of the city of Brooklyn, State of New York, and its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly employing, using, adopting or applying the name "Mentholanum" to the preparations or articles manufactured and sold by it, or any other name so similar to the trade name "Mentholanum" as to be likely to deceive and mislead the purchasing public and cause purchasers to believe that respondent's preparation is one and the same as that made and sold under the trade name "Mentholanum."

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FEDERAL TRADE COMMISSION *v.* BRUMAGE-  
LOEB CO., SUCCESSOR TO BUDDHA TEA CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS, APPROVED SEPTEMBER 26, 1914.

Docket No. 100.—June 6, 1918.

## SYLLABUS.

Where a corporation engaged in the sale and distribution of teas and coffees at wholesale gave and offered to give to customers, as an inducement to secure their patronage, certain personal property of

unequal values which was intended to be, and was, distributed to ultimate purchasers by lot or chance:

*Held*, That such distribution of gifts, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the Buddha Tea Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Buddha Tea Co., is doing business in the State of Pennsylvania, having its principal office and place of business at the city of Pittsburgh, in said State, now and for more than one year last past engaged in the business of roasting coffee and packing tea and selling the same generally in commerce throughout the States of the United States, the Territories thereof, and the District of Columbia, and that at all times hereinafter mentioned this respondent has carried on and conducted such business in direct competition with other persons, firms, co-partnerships and corporations similarly engaged.

PAR. 2. That for more than one year last past the respondent, Buddha Tea Co., in the distribution and sale of its products, as aforesaid, has given and offered to give, and is now giving and offering to give, customers and prospective customers, as an inducement to secure their trade and patronage, certain papers, coupons, or certificates which were and are redeemable in various prizes, or premiums, consisting of personal property of unequal values, the distribution of which was and is determined by chance or lot.

**REPORT, FINDINGS AS TO THE FACTS, AND  
ORDER.**

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it has reason to believe that the above-named respondent, Brumage-Loeb Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in this respect, and the respondent having entered its appearance by its president, R. L. Brumage, duly authorized to act in the premises, and having filed its answer admitting that the matters and things alleged in the said complaint are true in the manner and form therein set forth and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same and waiving any and all right to the introduction of such testimony, the Commission makes this report and findings as to the facts and conclusion.

**FINDINGS AS TO THE FACTS.**

PARAGRAPH 1. That the respondent, Brumage-Loeb Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its home office located at the city of Pittsburgh in said State, now, and for more than one year last past, engaged in the business of roasting coffee and packing tea, and selling the same generally in commerce throughout the States of the United States, the Territories thereof, and the District of Columbia, and that at all times hereinafter mentioned this respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 2. That for more than one year last past the respondent, Brumage-Loeb Co., in the distribution and sale of its products as aforesaid has given and offered to give and is now giving and offering to give customers and prospective customers as an inducement to secure their trade and patronage certain papers, coupons or certificates which were and are redeemable in various prizes or premiums, consisting of personal property of unequal values, the distribution of which was and is determined by chance or lot.

CONCLUSION.

That the method of competition set forth in the foregoing findings as to the facts in paragraph 2 is under the circumstances therein set forth an unfair method of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein and the respondent having entered its appearance by its president, R. L. Brumage duly authorized to act in the premises, and having filed its answer admitting that the matters and things alleged and contained in the said complaint are true in the manner and form therein set forth, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony, and the Commission having made and filed its report containing its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof. Now, therefore,

*It is ordered*, that the respondent, Brumage-Loeb Co., of Pittsburgh, Pa., and its officers, directors, agents, serv-

ants, and employees cease and desist from directly or indirectly giving or offering to give to its customers or prospective customers or those of its competitors' customers or prospective customers as an inducement to secure their trade and patronage coupons, papers, certificates, tokens, or other symbols that are redeemable in various prizes or premiums consisting of personal property of unequal values, the distribution of which is determined by chance or lot or otherwise, within 30 days from the service of this order.

The Commission has also issued similar orders in other cases involving substantially the same facts, as shown by the following:

TABLE.

Dates.	Docket No.	Respondents.	Answer, stipulation, or trial.
1918.			
June 6	102	The Dannemiller Grocery Co. (Inc.), Canton, Ohio.	Answer and consent.
6	105	A. Ethridge & Co., Rome, N. Y. ....	Do.
6	108	F. W. Hinz & Sons (Inc.), Cincinnati, Ohio.....	Do.
6	109	Thomas C. Jenkins (Inc.), Pittsburgh, Pa.....	Do.
6	110	The Johnson-Layne Coffee Co. (Inc.), St. Louis, Mo.....	Do.
6	112	Levering Coffee Co., Baltimore, Md.....	Do.
6	113	A. L. Mars & Co. (Inc.), Pittsburgh, Pa.....	Do.
6	114	M. S. Miller Co. (Inc.), Lancaster, Pa.....	Do.
6	115	Rice Bros. (Inc.), Philadelphia, Pa.....	Do.
6	116	Roth-Hornmeyer Coffee Co. (Inc.), St. Louis, Mo.....	Do.
6	117	William S. Scull Co. (Inc.), Camden, N. J.....	Do.
6	118	Sioux Falls Coffee & Spice Co. (Inc.), Sioux Falls, S. Dak.	Do.
6	119	Valley City Coffee & Spice Mills (Inc.), Seginaw, Mich.	Do.
6	120	The E. R. Webster Co., (Inc.) Cincinnati, Ohio....	Do.
July 22	99	C. F. Bonsor & Co. (Inc.), Philadelphia, Pa.....	Do.
23	107	The Grocers Coffee Co. (Inc.), Indianapolis, Ind....	Do.
31	111	C. D. Kenny Co. (Inc.), Baltimore, Md.....	Do.

## FEDERAL TRADE COMMISSION *v.* SEARS, ROE-BUCK & CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF THE ALLEGED VIOLATION OF SECTION 2 OF THE ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket No. 80.—June 24, 1918.

### SYLLABUS.

Where a mail-order house—

- (a) Advertised sugar, representing that it was able to sell the same at lower prices than its competitors because of its large purchases and the quick moving of its stock, the fact being that it sold such

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ing principal office and place of business located at the city of Chicago, in the State of Illinois, and is now, and was at all times hereinafter mentioned, engaged in the business of selling goods, wares, and merchandise throughout the States and Territories of the United States and the District of Columbia from one central office by catalogues, parcel post, express, and other means, and has carried on and conducted such business at all times hereinafter mentioned in direct trade competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business, the respondent, Sears, Roebuck & Co., owns and operates warehouses, situated in different States of the United States, and purchases large amounts of such merchandise both in foreign countries and in different States of the United States, and transports the same through other States of the United States to these warehouses, to await resale and delivery to the public; and that respondent manufactures a certain proportion of the merchandise sold by it, and in so doing purchases and enters into contracts of purchase for the necessary ingredients and materials therefor in foreign countries and different States of the United States, transporting the same to the various manufacturing plants owned or controlled by it, where they are made into the finished products, and then assembled in warehouses, as aforesaid, or shipped direct to the purchasers thereof; after such merchandise is so purchased or manufactured or produced in the various States and Territories of the United States and the District of Columbia, or in foreign countries, it is continuously moved to, from, and among other States and Territories of the United States and the District of Columbia, and there continuously has been at all times herein mentioned a constant current of trade and commerce in said merchandise between and among the various States and Territories of the United States and the District of Columbia, and especially from other States and Territories of the United States and the District of Columbia to and through the city of Chicago, State of Illinois, and therefrom to and through the other States and Territories of the United States and the District of Columbia.



PAR. 3. That the respondent, Sears, Roebuck & Co., in the sale of certain goods, wares, and merchandise, in interstate commerce, and more especially groceries, has, for more than two years last past, circulated throughout the various States and Territories of the United States and the District of Columbia, advertisements, offering for sale to the general public sugar at prices of from 3 to 4 cents per pound, and that said advertisements are false and misleading, in that they cause customers and prospective customers to believe that respondent, because of large purchases of sugar and because of quick-moving stock, is able to sell sugar at a price lower than others offering sugar for sale; whereas, in fact, respondent is selling said sugar at a loss, and its offer to so sell is limited to a definite quantity of sugar and is made only upon the express condition that certain specific amounts of other groceries be purchased therewith, for which respondent receives a price sufficient to give it a profit on the combined sale, including the sugar.

PAR. 4. That the respondent, Sears, Roebuck & Co., has, for more than two years last past, circulated throughout the States and Territories of the United States and the District of Columbia the advertisements heretofore referred to, and more particularly described in paragraph 3 of this complaint, and that said advertisements are false and misleading, being calculated to lead the trade and general public to believe that respondent is selling its sugar at a price much lower than that of its competitors, and thereby imputing its competitors with the purpose of charging more than a fair price for their sugar.

PAR. 5. That the respondent, Sears, Roebuck & Co., with the purpose, intent, and effect of harrassing and embarrassing its competitors, and destroying their trade and suppressing and stifling competition in the sale of its merchandise in interstate commerce, has, for more than two years last past, sold certain of its merchandise at less than cost, on the express condition that the customer simultaneously purchase other merchandise upon which the respondent makes a profit.

PAR. 6. That the respondent, Sears, Roebuck & Co., with the purpose, intent, and effect of injuring and embarrassing and discrediting its competitors, for more than two years

last past, has circulated catalogues throughout the various States and Territories of the United States, the District of Columbia, and in foreign countries, among customers and prospective customers of competitors, containing certain advertisements, wherein it is represented that—

(a) The quality of goods, wares, and merchandise handled and sold by its competitors is inferior to that of similar merchandise sold by respondent;

(b) Certain of respondent's competitors do not deal justly, fairly, and honestly with their customers;

(c) Respondent can and does buy its commodities in markets which are not accessible to its competitors, and by reason thereof is able to give customers better advantages in quality and price than those offered by its competitors; and that such advertisements and statements are false and misleading and calculated and designed to deceive the trade and general public.

## II.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Sears, Roebuck & Co., hereinafter referred to as the respondent, has been, and is, violating the provisions of section 2 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That the respondent, Sears, Roebuck & Co., for several years last past, in the course of interstate commerce, has discriminated in price, and is discriminating in price, between different purchasers of sugar, which sugar is sold for use, consumption, and resale within the United States and the Territories thereof and the District of Columbia, in that the respondent has made a special price to customers who buy simultaneously with said sugar certain definite amounts of other merchandise, and that the effect of such discrimination may be to substantially lessen competition, or tend to create a monopoly.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued its complaint wherein it is alleged that it had reason to believe that the above-named respondent has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect to the allegations therein set forth would be to the interest of the public, and has been and now is discriminating in prices between different purchasers of its goods, wares and merchandise in violation of section 2 of an act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and fully stating its charges in this respect, and the respondent, having entered its appearance and made answer in these proceedings by Sidney Adler, its attorney, who having stipulated and agreed in writing with the attorneys for the Commission that a certain statement of facts which had been agreed upon by said attorneys be filed and taken as the evidence in these proceedings; so that the Commission could determine whether the said respondent had violated the provisions of the Statutes hereinbefore designated; and after hearing the arguments of the respondent's attorney, and of the attorneys for the Commission upon said evidence, the Commission makes its report and its findings as to the facts and conclusions of law.

### FINDINGS AS TO THE FACTS.

#### I.

PARAGRAPH 1. That the respondent, Sears, Roebuck & Co. is a corporation created by, and existing under, the laws of the State of New York, having a capital stock of \$83,000,000, and has for a long time past been engaged in the business of selling goods, wares, and merchandise throughout the various States and Territories of the United States in competi-

tion with certain persons, firms, copartnerships and corporations similarly engaged; that its sales for the year 1913 were \$95,584,716; for 1914, \$101,121,661; for 1915, \$112,665,573; for 1916, \$145,000,000; and for 1917, \$176,000,000; that a part of the business transacted by said company consists of the sale in interstate commerce through the various States and Territories of the United States and the District of Columbia of large quantities of groceries, the volume of which for the year 1913 was \$6,202,000; 1914, \$8,696,000; 1915, \$8,792,000; 1916, \$10,900,000; and 1917, \$13,200,000.

PAR. 2. That the respondent, Sears, Roebuck & Co., in the sale of certain of its goods, wares, and merchandise in interstate commerce, and more especially groceries, has for more than two years last past circulated throughout the various States and Territories of the United States and the District of Columbia, catalogues, containing advertisements offering for sale to its customers, prospective customers, and customers of competitors, and to the general public, sugar at from three to four cents per pound, wherein it was represented that the respondent, because of large purchases of sugar and quick moving stock, was able to sell sugar at a price lower than others offering the same for sale; that such advertisements were false and misleading by reason of the fact that the respondent sold such sugar in all cases at less than cost, and its offer so to sell, as aforesaid, was always limited to a definite quantity of sugar, and was always made upon the condition that certain specific amounts of other groceries be purchased therewith, for which respondent received a price sufficient to give it a profit on the combined sale including sugar.

PAR. 3. That the respondent, Sears, Roebuck & Co., with the intent, purpose and effect of harassing and embarrassing its competitors and destroying their trade, did for a long period of time prior to August, 1917, and continuously during such period, sell throughout the various States and Territories of the United States and the District of Columbia, large quantities of sugar at less than cost; that for the latter half of 1915, said respondent sold sugar throughout the various States and Territories of the United States and the District of Columbia in the aggregate amounting to the sum

of \$780,000 and at a loss of approximately \$196,000, and at all other times during said period the respondent sold other large quantities of sugar continuously at a loss, all of such sales being made on the express condition that the purchasers thereof simultaneously purchase other merchandise upon which the respondent made a profit.

PAR. 4. That the respondent, Sears, Roebuck & Co., did for more than two years last past, circulate throughout the States and Territories of the United States, and the District of Columbia, certain advertisements offering for sale its sugar to customers, prospective customers and customers of competitors and to the general public which were calculated to lead the trade and the general public to believe that competitors in selling their sugar were charging more than a fair price for the same.

PAR. 5. That, with the intent, purpose, and effect of embarrassing and discrediting competitors, the respondent did, for more than two years last past, circulate throughout the various States and Territories of the United States and the District of Columbia, among its customers and prospective customers, and among customers of its competitors, certain catalogues containing advertisements offering for sale its goods, wares, and merchandise, in which it was represented that respondent's competitors did not deal justly, fairly, and honestly with their customers.

PAR. 6. That for more than two years last past, the respondent did circulate through the various States and Territories of the United States, and the District of Columbia, catalogues containing advertisements offering for sale its teas to its customers, prospective customers, and customers of its competitors and to the general public, and claiming therein that such teas were purchased through a special representative of said respondent who was sent to Japan for such purpose, and who personally supervised the picking of the same, and by such method of purchase and supervision as aforesaid, the respondent not only secured the finest and choicest leaves for its best grade of teas so purchased, but saved the middleman's profit as well; that such statements were false and misleading by reason of the fact that the re-

spondent purchased a very large percentage of its teas from importers located in the United States and in the same manner in which teas were purchased by competitors.

PAR. 7. That the respondent for more than two years last past circulated through the various States and Territories of the United States catalogues containing other advertisements offering for sale its coffees to customers; prospective customers, customers of competitors, and the general public, in which it was represented that said respondent purchased all of its coffees direct from the best plantations in the world, thereby securing not only the pick of the crop but also enabling the respondent to sell to its customers the very best coffees at very low prices; that such statements were false and misleading by reason of the fact that it appears the coffees purchased by said respondent for a number of years last past were purchased from importers located in the United States and from whom its competitors purchased their coffees.

#### CONCLUSION.

That the methods of competition as set forth in paragraphs 2 to 7, inclusive, of the foregoing findings as to the facts are unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent, Sears, Roebuck & Co., having entered its appearance and filed its answer by Sidney Adler, its attorney, who having stipulated and agreed in writing with the attorneys for the Commission that a certain statement of facts which had been agreed upon by said attorneys should be filed and taken to be the evidence in these proceedings, and the Federal Trade Commission having made and filed a report containing its findings as to the facts and its conclusions that the respondent had

violated section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part of these proceedings. Therefore,

*It is ordered*, that the respondent Sears, Roebuck & Co., its officers and agents, cease and desist from—

(1) Circulating throughout the States and Territories of the United States and the District of Columbia, catalogues containing advertisements offering for sale sugar, wherein it is falsely represented to its customers or prospective customers of said respondent or to customers of competitors, or to the public generally, or leads them to believe, that because of large purchasing power and quick-moving stock, respondent is able to sell sugar at a price lower than its competitors.

(2) Selling, or offering to sell, sugar below cost through catalogues circulated throughout the States and Territories of the United States, and the District of Columbia, among its customers, prospective customers, and customers of its competitors.

(3) Circulating throughout the various States and Territories of the United States and the District of Columbia, among customers, prospective customers, and customers of its competitors, catalogues containing advertisements representing that respondent's competitors do not deal justly, fairly, and honestly with their customers.

(4) Circulating throughout the various States and Territories of the United States and the District of Columbia, among customers, prospective customers, or customers of its competitors, catalogues containing advertisements offering for sale its teas, in which said advertisements it is falsely stated that the respondent sends a special representative to Japan who personally goes into the tea gardens of said country and personally supervises the picking of such teas.

(5) Circulating through the various States and Territories of the United States and the District of Columbia, among customers, prospective customers, or customers of its competitors, catalogues containing advertisements offering for sale its coffees, in which it falsely stated that the respondent purchases all its coffees direct from the best plantations in the world.

**FEDERAL TRADE COMMISSION *v.* UNITED STATES GOLD LEAF MANUFACTURERS' ASSOCIATION ET AL.**

**COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.**

Docket No. 95.—June 28, 1918.

**SYLLABUS.**

Where about 40 per cent of the concerns in the United States engaged in the manufacture of gold leaf, manufacturing and selling about 50 per cent of the total output of the country, formed an unincorporated association, and by concerted action through such association and by agreement,

- (a) fixed the price of such product and attempted to bring about a general uniformity thereof; and
- (b) enhanced such price and attempted to maintain the same:

*Held*, That such combination of competitors and such fixing and enhancement of prices constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

**COMPLAINT.**

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the United States Gold Leaf Manufacturers' Association, an unincorporated association without a constitution or by-laws, whose officers are Robert E. Hastings, of the city of Philadelphia, State of Pennsylvania, president; F. W. Rauskolb, of the city of Boston, State of Massachusetts, vice president; and Frank H. Scardefield, of the city of Brooklyn, State of New York, secretary, with its principal office and place of doing business located in the city of Brooklyn, of said State of New York, and the individuals whose names, location of their principal offices, and places of doing business are as follows, to wit:

Name.	Office.	State.
Chas. E. Auer.....	Brooklyn.....	New York.
Harry Ayres.....	Philadelphia.....	Pennsylvania.
W. D. Ashmore.....	Red Bank.....	New Jersey.
H. Bauer.....	Brooklyn.....	New York.
Eugene Bailey.....	do.....	do.
John Clarke.....	Philadelphia.....	Pennsylvania.
F. A. Chadwick.....	Red Bank.....	New Jersey.
Robt. Clayton.....	West Hoboken.....	Do.



violated section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part of these proceedings. Therefore,

*It is ordered*, that the respondent Sears, Roebuck & Co., its officers and agents, cease and desist from—

(1) Circulating throughout the States and Territories of the United States and the District of Columbia, catalogues containing advertisements offering for sale sugar, wherein it is falsely represented to its customers or prospective customers of said respondent or to customers of competitors, or to the public generally, or leads them to believe, that because of large purchasing power and quick-moving stock, respondent is able to sell sugar at a price lower than its competitors.

(2) Selling, or offering to sell, sugar below cost through catalogues circulated throughout the States and Territories of the United States, and the District of Columbia, among its customers, prospective customers, and customers of its competitors.

(3) Circulating throughout the various States and Territories of the United States and the District of Columbia, among customers, prospective customers, and customers of its competitors, catalogues containing advertisements representing that respondent's competitors do not deal justly, fairly, and honestly with their customers.

(4) Circulating throughout the various States and Territories of the United States and the District of Columbia, among customers, prospective customers, or customers of its competitors, catalogues containing advertisements offering for sale its teas, in which said advertisements it is falsely stated that the respondent sends a special representative to Japan who personally goes into the tea gardens of said country and personally supervises the picking of such teas.

(5) Circulating through the various States and Territories of the United States and the District of Columbia, among customers, prospective customers, or customers of its competitors, catalogues containing advertisements offering for sale its coffees, in which it falsely states that respondent purchases all its coffees direct from plantations in the world.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 5 OF THE ACT OF OCTOBER APPROVED SEPTEMBER 21,  
1914.

**Docket No 54-June 25, 1974**

## SYLLABUS

Where about 40 per cent of the resources in the United States engaged in the manufacture of great steel manufacturing and selling about 50 per cent of the total output of the country formed an incorporated association, and by concerted action through such association and by agreement.

- (c) fixed the price of such jawline and attempted to bring about a general uniformity thereof; and

- (b) enhanced such price and attempted to maintain the same.

**Held**, That such combination of manufacturers and each fixing and enhancement of prices constituted an unfair method of competition in violation of section 5 of the act of September 8, 1934.

## COMPLAINT

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the United States Gold Leaf Manufacturers' Association, an incorporated association without a constitution or by-laws, whose officers are Robert E. Hastings, of the city of Philadelphia, State of Pennsylvania, president; F. W. Randolph, of the city of Boston, State of Massachusetts, vice president; and Frank H. Scardefield, of the city of Brooklyn, State of New York, secretary, with its principal office and place of doing business located in the city of Brooklyn, of said State of New York, and their principal officials whose names, location of places of doing business are as follows, to w

manufacture and sell the  
gold leaf made and sold

Name.	Office.	State.
Geo. Dickson.....	Brooklyn.....	New York.
Alex. Fraser.....	New York.....	Do.
D. Froeschauer.....	Brooklyn.....	Do.
W. Grecht.....	Orange, R. D. 1.....	California.
S. A. Hickson.....	New York.....	New York.
Robt. Hanke.....	do.....	Do.
Geo. Harris.....	do.....	Do.
A. A. Lauriat.....	Medford.....	Massachusetts.
Frank Ludwick.....	Brooklyn.....	New York.
Chas. R. McLeod.....	New York.....	Do.
John McEntee.....	do.....	Do.
John D. McCable.....	Brooklyn.....	Do.
Geo. Mussler.....	do.....	Do.
John A. Morneburg.....	Hicksville.....	Long Island, N. Y.
John Menz.....	Brooklyn.....	New York.
Eugene J. Norton.....	Philadelphia.....	Pennsylvania.
Frederick Pye.....	Delawanna.....	New Jersey.
Leonard Riker.....	Jersey City.....	Do.
Edw. Radford.....	Chicago.....	Illinois.
A. H. Williams.....	West Hoboken.....	New Jersey.
Chas. E. Williams.....	Brooklyn.....	New York.
Fred Welderer.....	do.....	Do.
Joe. Wingarter.....	do.....	Do.

and that the corporations whose names, location of their principal offices, and places of doing business, and the States under whose laws they are organized, existing, and doing business, are as follows, to wit:

Name.	Office.	State.
American Roll Gold Leaf Co.....	Providence.....	Rhode Island.
W. H. Coe Manufacturing Co.....	do.....	Do.
W. H. Cox Co.....	Chicago.....	Illinois.
F. W. Rauskolb Co.....	Boston.....	Massachusetts.
Wehrung & Billmeier Co.....	Chicago.....	Illinois.

and the copartners whose individual and firm names and style under which they are doing business, the location of their principal offices and places of doing business, are as follows, to wit:

Individuals.	Firm names.	Office.
Henry B. Cabot.....	Cabot & Higby.....	Boston, Mass.
Chas. H. Higby.....	do.....	Do.
Frank H. Caffin.....	Frank H. Caffin & Son.....	Do.
F. Henry Caffin.....	do.....	Do.
Robert E. Hastings.....	Hastings & Co.....	Philadelphia, Pa.
J. V. Hastings.....	do.....	Do.
R. E. Hastings.....	Kemp & Co.....	New York, N. Y.
J. V. Hastings.....	do.....	Do.
Frederick Schultz.....	Michael Schultz's Sons.....	Do.
John W. Schultz.....	do.....	Do.
Emil Madsen.....	Madsen & Hauptmann.....	Brooklyn, N. Y.
Jacob Hauptmann.....	do.....	Do.

and Charles Taylor, 18 Congress Street, Jersey City, State of New Jersey, doing business under the firm name and style of Chas. Taylor & Sons, and the following firms whose identities as to being individuals, copartnerships, or corporations are unknown to this Commission: F. Bittner & Son, 147 Dresden Street, Brooklyn, State of New York; George L. Bladon & Co., 101 Trumbull Street, Hartford, State of Connecticut; William Gregory & Son, 518 Curtin Avenue, Richmond Hill, State of New York; Julius Hess & Co., 1417 Altgeld Street, Chicago, State of Illinois; Longmore Bros., 1229 Myrtle Avenue, Brooklyn, State of New York; Standard Gold Leaf Co., 873 Fifth Avenue, Brooklyn, State of New York; M. Swift & Sons, 100 Love Lane, Hartford, State of Connecticut; all of which persons, firms, copartnerships, and corporations, hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. That the respondent, United States Gold Leaf Manufacturers' Association, is an association composed of the other respondents herein mentioned, who are all and singular engaged in the business of manufacturing and selling generally in commerce gold leaf throughout the States and Territories of the United States and the District of Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged, and in direct competition among each other except where self-restrained by agreement, understanding, or concerted action, as hereinafter set out, or otherwise; and are, each and all of them, members of said association except the respondent, F. Bittner & Son, which firm resigned from said association on the 1st day of January, A. D. 1918.

PAR. 2. That the respondents manufacture and sell the greater portion of the output of gold leaf made and sold

in commerce within the United States, and the membership of the respondent, United States Gold Leaf Manufacturers' Association, represents a majority of the persons, firms, co-partnerships, and corporations engaged in such industry and commerce in the United States.

PAR. 3. That the respondents, either as individuals or as members of said association, have for more than one year last past, both individually and as members of said association, been and now are engaged in a concerted movement to unduly enhance the prices of gold leaf, and to maintain such enhanced price, and to bring about a general uniformity of such prices, and as a result of such activities prices of gold leaf have been enhanced and such enhanced prices are being maintained. Such enhancement and general uniformity has been effected by agreements, understandings, and concert of action, through meetings, correspondence, and other means of intercommunication between respondents, members and ex-members of said association, among themselves and between such respondents and the said association and its secretary, Frank H. Scardefield.

PAR. 4. That said respondents by agreement, understanding, or concerted action, pool their surplus products and export same in foreign commerce, and sell such surplus products abroad at a less price than such products are being sold at the same time in the United States, and respondents have an agreement or understanding that assessment shall be made among them to cover losses on such foreign sales when made below cost; that the effect of such practices is to curtail the supply for the domestic market and restrain the competition which would naturally result within the United States from the competitive sale of such surplus products, to the resultant injury and detriment in competition and to the public, and in aid of the control and enhancement of prices by these respondents exercised as hereinbefore stated.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the respondents, United States Gold Leaf

Manufacturers' Association, Robert E. Hastings, F. W. Rauskolb, Frank H. Scardefield, Charles E. Auer, Harry Ayres, W. D. Ashmore, H. Bauer, Eugene Bailey, John Clarke, F. A. Chadwick, Robert Clayton, George Dickson, Alexander Fraser, D. Freschauer, W. Grecht, S. A. Hickson, Robert Henke, George Harris, A. A. Lauriat, Frank Ludwick, Charles R. McLeod, John McEntee, John D. McCable, George Mussler, John A. Morneburg, John Menz, Eugene J. Norton, Frederick Pye, Leonard Riker, Edw. Radford, M. Swift & Sons, Charles Taylor, A. H. Williams, Charles E. Williams, F. W. Rauskolb Co., Fred Weiderer, Joseph Wingerter, American Roll Gold Leaf Co., W. H. Coe Manufacturing Co., W. H. Cox Co., Wehrung & Billmeier Co., Henry B. Cabot, Charles H. Higby, Frank H. Caffin, F. Henry Caffin, John V. Hastings, R. E. Hastings, J. V. Hastings, Emil Madsen, Jacob Hauptmann, Frederick Schultz, John W. Schultz, F. Bittner & Son, George L. Bladon & Co., William Gregory & Son, Julius Hess & Co., Standard Gold Leaf Co., have been and are now using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondents, desiring to make it unnecessary to take testimony and to be relieved of the expense of a trial of the issues necessary by reason of the answers and denials of the various respondents, having signed an agreement and stipulation as to the facts, and agreeing and consenting that the Commission forthwith proceed to make its findings and order, and for that purpose said stipulation to have the effect and be considered as the appearance and answer of said respondents, the Commission makes this report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

I. That the respondent, the United States Gold Leaf Manufacturers' Association, is an unincorporated associa-

tion, with its principal office and place of doing business located in the city of Brooklyn, in the State of New York, composed of the other respondents herein, except the respondent F. Bittner & Son, which firm resigned from said association on the 1st day of January, A. D. 1918. That all are engaged in the business of manufacturing and selling gold leaf generally in commerce throughout the States and Territories of the United States and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged, and in direct competition with each other, except where self-restrained by understanding or concerted action, as herein-after set forth, or otherwise.

II. That the respondents manufacture and sell about 50 per cent of the output of gold leaf made and sold in commerce within the United States, and the membership of said association represents about 40 per cent of the persons, firms, copartnerships, and corporations engaged in such industry and commerce in the United States.

III. That the respondents, now and for more than one year last past, have been engaged, among other things, in a concerted movement to fix and enhance the price of gold leaf and to maintain and bring about a general uniformity of such enhanced prices; that as a result of such activities the prices of gold leaf have been enhanced and such enhanced prices are being maintained, but absolute uniformity has not resulted therefrom; that such enhancement and general uniformity have been effected by understandings and concert of action through meetings, correspondence, and other means of intercommunication between respondents, members and ex-members of said association, among themselves and between the members and the said association and its secretary, Frank H. Scardefield; that on the 25th day of October, 1917, the price of gold leaf  $3\frac{3}{8}$  by  $3\frac{3}{8}$  (the standard size) was increased from \$8.75 to \$9.75 per pack of 20 books, less 2 per cent, said price having been fixed by said association at a meeting at which there was present a majority of its membership, it being understood at the meeting that said price should be maintained by all the members

present; that other increases in price have been fixed in the same manner, at meetings of said association, as follows:

An understanding was effected at a meeting held in March or April, 1916, raising the price from \$6.75 to \$7.50, and at a meeting held in November, 1916, raising the price from \$7.50 to \$8.75, said meetings having been called to discuss and grant advance wage scale. That there is, and has been for more than one year last past, an understanding among members of said association to maintain, at all times, prices on gold leaf agreed upon at said association meetings, but that the result of such understanding has not led to an absolute uniformity of price.

IV. That the respondent members of said association set forth in the complaint herein, entered into an understanding December 5, 1917, to endeavor to secure foreign orders, for the purpose of keeping laborers employed, and to sell such products for which there is no demand in the United States at the best price obtainable; that an assessment was to be made to cover any possible losses on such foreign sales, when said sales were made below cost to meet competition, but as no foreign orders were received and the agent selected had resigned, the resolution was rescinded.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondents having signed an agreement and stipulation as to the facts, and agreeing and consenting that the Commission forthwith proceed to make its findings and order, and for that purpose said stipulation shall have the effect and be considered as the appearance and answer of said respondents, and the Commission



having made and filed its report containing its findings as to facts and its conclusions, that the respondents have violated section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof. Now therefore

*It is ordered*, that the respondents, United States Gold Leaf Manufacturers Association, Robert E. Hastings, F. W. Rauskolb, Frank H. Scardefield, Charles E. Auer, Harry Ayres, W. D. Ashmore, H. Bauer, Eugene Bailey, John Clarke, F. A. Chadwick, Robert Clayton, George Dickson, Alex. Fraser, D. Freschauer, W. Grecht, S. A. Hickson, Robert Henke, George Harris, A. A. Lauriat, Frank Ludwick, Charles R. McLeod, John McEntee, John D. McCable, George Mussler, John A. Morneburg, John Menz, Eugene J. Norton, Frederick Pye, Leonard Riker, Edw. Radford, M. Swift & Sons, Charles Taylor, A. H. Williams, Charles E. Williams, F. W. Rauskolb Co., Fred Weiderer, Joseph Wingerter, American Roll Gold Leaf Co., W. H. Coe Manufacturing Co., W. H. Cox Co., Wehrung & Billmeier Co., Henry B. Cabot, Charles H. Higby, Frank H. Caffin, F. Henry Caffin, John V. Hastings, R. E. Hastings, J. V. Hastings, Emil Madsen, Jacob Hauptmann, Frederick Schultz, John W. Schultz, F. Bittner & Son, George L. Bladon & Co., William Gregory & Son, Julius Hess & Co., Standard Gold Leaf Co., forever cease and desist from—

Engaging in any concerted movement, either as members or officials of the United States Gold Leaf Manufacturers Association, or as individuals, (a) to fix or enhance the prices of gold leaf, or (b) to maintain such enhanced prices, or (c) to bring about a general uniformity of such prices, and (d) from effecting or maintaining such enhanced prices or general uniformity of prices through understandings and concerted action through meetings, correspondence, or other means of intercommunication between respondents, members, and ex-members of such association, among themselves and between said members and the said association and its secretary, or in any other manner whatsoever.

FEDERAL TRADE COMMISSION *v.* CHICAGO  
FLEXIBLE SHAFT CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 3 OF AN ACT OF CONGRESS APPROVED OCTOBER 15,  
1914.

Docket No. 22.—July 18, 1918.

## SYLLABUS.

Where a manufacturer of horse-clipping and sheep-shearing machines, which were sold to more than two-thirds of the jobbers and wholesalers who handled such machines, offered to pay and paid at the end of each six months a rebate of 7 per cent of the purchase price thereof to such dealers as had not during such six-month period "bought, sold, received, or quoted, either directly or indirectly," machines of like character, or parts thereof made by any other manufacturer, with the effect of substantially lessening competition; *Held*, That such payments and offers to pay, under the circumstances set forth, constituted a violation of section 3 of the act of October 15, 1914.

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Chicago Flexible Shaft Co., hereinafter referred to as the respondent, has violated and is violating the provisions of section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," hereinafter referred to as the Clayton Act, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Chicago Flexible Shaft Co., is now and was at all the times hereinafter mentioned a corporation organized, existing under and by virtue of the laws of the State of Illinois, having its principal office and place of business at the city of Chicago, in said State, and extensively engaged in the manufacture of various commodities, among which are horse-clipping and sheep-shearing machines, and in the sale and shipment of said commodities to persons, copartnerships, and corporations in other States and Territories of the United States, the District of Columbia, and foreign countries.

PAR. 2. That the above-named respondent, the Chicago Flexible Shaft Co., for several years last past in the course of interstate commerce, has sold and made contracts for sale and is now selling and making contracts for sale of large quantities of sheep-shearing and horse-clipping machines, for use and resale within the United States, and has fixed, and is now fixing, the prices charged therefor, or discount from, or rebate upon such prices, on the condition, agreement, or understanding that purchasers thereof shall not use or deal in the sheep-shearing or horse-clipping machines, or parts thereof, of a competitor or competitors of the respondent; and that the effect of such sales and contracts for sales, or such conditions, agreements, or understandings may be and is to substantially lessen competition and to tend to create a monopoly in the sheep-shearing and horse-clipping machine industry.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged it had reason to believe that the above-named respondent, the Chicago Flexible Shaft Co., has been and now is violating the provisions of section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and fully stating its charges in this respect, and the respondent having entered its appearance by Winston, Strawn & Shaw, its attorneys duly authorized to act in the premises, and having filed its answer admitting certain of the matters and things alleged and set forth in the said complaint, and denying others therein contained, and the cause having been referred to William J. Dowd, an examiner of the Federal Trade Commission, with instructions to hear the testimony in the case and report his findings to the said Commission, and the said examiner, pursuant to notice, having held hearings in this matter in the city of New York, State of New York, on the 26th and 27th days of June, 1918, and the matter having been continued by him for fur-

ther hearing at the city of Chicago, State of Illinois, on the 5th day of July, 1918, at which time and place the parties hereto having appeared before the said examiner and entered into an agreed statement of facts, wherein it was stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and upon the same forthwith proceed to make and enter its report, stating its findings as to the facts and its conclusions and its order, and the said agreed statement of facts having been heretofore duly filed with this Commission, the Commission now makes this its report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Chicago Flexible Shaft Co., is now, and for more than four years last past has been, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and factory located at the city of Chicago, in said State.

PAR. 2. That the respondent, Chicago Flexible Shaft Co., is now, and for more than four years last past has been, engaged, among other things, in the business of manufacturing and selling horse-clipping and sheep-shearing machines and the parts thereof, generally in commerce throughout the States of the United States, the Territories thereof, and the District of Columbia in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 3. That during the period from October 15, 1914, to October 1, 1917, there were approximately 603 jobbers and wholesalers in various localities throughout the United States dealing in horse-clipping and sheep-shearing machines and the parts thereof.

PAR. 4. During the period from October 15, 1914, to October 1, 1917, the respondent, Chicago Flexible Shaft Co., sold to approximately 493 of the jobbers and wholesalers described aforesaid horse-clipping and sheep-shearing machines

and the parts thereof for use, consumption, and resale within the United States, the Territories thereof, and the District of Columbia under the terms of a so-called "jobbers' premium offer," in which, among other provisions, the following was contained:

We respectfully advise that on shipments made during the year beginning August 1 we will pay the premium named below on your paid purchases of our horse-clipping machines and sheep-shearing machines and the parts thereof, provided you shall have complied with the conditions named below. The continuation of our business relations is not dependent upon your complying with the conditions named below, but your right to receive the premium is dependent upon your strict compliance with those conditions. Whether you win the premium or not is therefore wholly optional with you.

That one of the conditions named in said premium offer was as follows:

That during neither of the periods of six months named below you shall have bought, sold, received or quoted either directly or indirectly any horse-clipping machines, sheep-shearing machines or parts thereof made by any other manufacturer.

That it was further provided in said premium offer that the respondent would pay on or about January 15 and June 15 in each year a premium of 7 per cent, to its customers on all the paid purchases of horse-clipping machines, sheep-shearing machines and parts thereof bought from the respondent if the customer absolutely complied with the condition hereinabove set forth.

That during said period from October 15, 1914, to October 1, 1917, the respondent did semiannually pay to its customers who had observed and complied with the terms of the premium offer, the 7 per cent offered in said premium offer.

PAR. 5. That during the period from October 15, 1914, to October 1, 1917, the respondent, Chicago Flexible Shaft Co., paid to various purchasers of its horse-clipping and sheep-shearing machines and parts thereof throughout the States of the United States, the Territories thereof, and the District of Columbia approximately \$49,323.25 in discounts from the price charged for said machines and parts in consideration of the purchasers having, during said period, not used or dealt in the horse-clipping and sheep-shearing

machines and parts thereof of any competitor or competitors of the respondent, Chicago Flexible Shaft Co.

PAR. 6. That the effect of the allowing and paying of discounts, as more fully described and set forth in paragraphs 4 and 5 herein, may be to substantially lessen competition or tend to create a monopoly in the sheep-shearing and horse-clipping machine industry.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts, in paragraphs 3 to 6, inclusive, and each and all of them, are, under the circumstances therein set forth, in violation of the provisions of section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein and the respondent having entered its appearance by Winston, Strawn & Shaw, its attorneys duly authorized to act in the premises, and having filed its answer admitting certain of the allegations in the said complaint and denying others therein contained, and thereafter having entered into an agreed statement of facts, wherein it was agreed and stipulated that the Commission should proceed forthwith upon such agreed statement of facts to make and enter its report, stating its findings as to the facts and its order disposing of this proceeding without the introduction of further testimony, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated the provisions of section 3 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which said report is hereby referred to and made a part hereof. Now, therefore,

*It is ordered* that the respondent, Chicago Flexible Shaft Co. of Illinois, and its officers, directors, repre-

sentatives, agents, servants, and employees, cease and desist from directly or indirectly selling or contracting to sell horse-clipping and sheep-shearing machines and parts thereof for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia, or any place under the jurisdiction of the United States, or fix a price charged therefor or discount from or rebate upon such price on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in the horse-clipping and sheep-shearing machines and parts thereof of any competitor or competitors of the Chicago Flexible Shaft Co. of Illinois.

*Provided, however,* That nothing herein contained shall now or at any time hereafter be construed as being res adjudicata as between the Federal Trade Commission or any other department of the Government of the United States and the respondent that any provision of the so-called premium offer other than the ones quoted in paragraph 4 of the findings of this Commission is illegal or prohibited by the terms of any statute of the United States.

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## FEDERAL TRADE COMMISSION *v.* E. J. BRACH & SONS.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 121.—July 18, 1918.

### SYLLABUS.

Where a corporation engaged in the manufacture and sale of candy published and circulated advertisements falsely stating and holding out that it was selling and offering to sell its products at prices below cost:

*Held,* That such advertisements constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that E. J. Brach & Sons, hereinafter referred to as respondent, has

been and is using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public issues this complaint, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondent, E. J. Brach & Sons, is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal factory, office, and place of business located at the city of Chicago, in said State, now and for more than two years last past engaged in the manufacture and sale of candy and similar products among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, E. J. Brach & Sons, in the conduct of its business manufactures such candy so sold by it, in its factory located at the city of Chicago, State of Illinois, and purchases and enters into contracts of purchase for the necessary component materials needed therefor in different States and Territories of the United States, causing the same to be transported to its factory, where they are made into the finished product, sold, and shipped to the purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among other States and Territories of the United States, the District of Columbia, and foreign countries, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in the said products between and among the various States and Territories of the United States and the District of Columbia, and especially to and through the city of Chicago, State of Illinois, and therefrom to and through other States and Territories of the United States and the District of Columbia.



PAR. 3. That the respondent, within the last year, for the purpose, intent, and effect of stifling and suppressing competition in the sale of candy in interstate commerce, has circulated and published throughout the States of the United States and the Territories thereof certain advertisements in which it was stated, set forth, and held out that this respondent was selling and offering to sell candy at cost, or at and for a price less than cost, and that such statements were false and misleading and calculated and designed to and did deceive and mislead the trade and general public.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, E. J. Brach & Sons, has been, and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered its appearance by Fisher, Boyden, Kales & Bell, its attorneys duly authorized to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, but denying that the same were committed with the knowledge of the managing officers of the respondent corporation, and thereafter the respondent having entered into an agreed statement of facts, whereby it was stipulated and agreed that the Commission should take such agreed statement of facts as the evidence in this case, and in lieu of testimony herein and proceed forthwith upon the same to make and enter its report stating its findings as to the facts and conclusions and its order, and the said agreed statement of facts having been heretofore duly filed, the Commission now makes its findings as to the facts and conclusions.

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, E. J. Brach & Sons, is now, and for more than two years last past has been, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal factory, office, and place of business located at the city of Chicago, in said State.

PAR. 2. That the respondent, E. J. Brach & Sons, is now, and for more than two years last past has been, engaged in the business of manufacturing and selling candy generally in commerce throughout the States of the United States, Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 3. That the respondent, E. J. Brach & Sons, during the period of one year prior to the 30th day of April, A. D. 1918, while selling candy in commerce aforesaid at and for prices above cost of the same, published and caused to be published certain printed advertisements which were circulated among dealers in candy throughout the various States of the United States, in which said advertisements it was stated and held out that the respondent was selling and offering to sell candy at and for prices less than cost.

PAR. 4. That the advertisements mentioned and described in the foregoing paragraph herein were circulated and caused to be circulated by the sales department of the respondent, and the same was done without the knowledge of the managing officers of the respondent corporation, and that the said respondent is not now selling or offering to sell candy in commerce aforesaid at and for prices less than cost.

## CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 2, 3, and 4, and each and all of them, are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein and respondent having entered its appearance by its attorneys, Fisher, Boyden, Kales & Bell, duly authorized to act in the premises, and having filed its answer admitting that certain of the matters and things alleged and contained in the said complaint are true in the manner and form therein set forth, and thereafter having made and entered into an agreed statement of facts, wherein it was stipulated that the Commission should forthwith proceed upon such agreed statement of facts to make and enter its report, stating its findings as to the facts and conclusions and its order, and the Commission having made such report, which said report is hereby referred to and made a part hereof.

Now, therefore, it is ordered, that the respondent, E. J. Brach & Sons, of Chicago, State of Illinois, and its officers, directors, representatives, agents, servants, and employees cease and desist from directly or indirectly publishing and circulating advertisements or printed circulars, or letters, or similar devices, in which it is stated and held out that it is selling and offering to sell in interstate commerce candy at and for prices less than cost, while actually selling such candy in interstate commerce at and for prices equal to or above the cost of production.

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FEDERAL TRADE COMMISSION *v.* TWIN CITY  
VARNISH CO. OF ILLINOIS.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 5 OF THE ACT OF CONGRESS, APPROVED SEPTEMBER 26,  
1914.

Docket No. 169.—July 18, 1918.

## SYLLABUS.

Where a corporation engaged in the sale of varnish and kindred products paid and offered to pay to employees of customers and of competitors' customers, sums of money, as an inducement for them to influence their employers to purchase its goods or to refrain from dealing with its competitors:

*Held*, That such payments and offers to pay, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Twin City Varnish Co. of Illinois, hereinafter referred to as respondent, has been, for more than a year last past, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Twin City Varnish Co. of Illinois, is a corporation, organized and existing and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business at the city of Chicago, in said State, and is now and for more than one year last past has been engaged in selling varnish and kindred products throughout the States and Territories of the United States, and that at all times hereinafter mentioned, the respondent has carried on and conducted such business in direct competition with other persons, firms, co-partnerships and corporations selling like products.

PAR. 2. That, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the sale of varnish and kindred products, the respondent, for more than one year last past, has been, systematically and on a large scale, secretly paying and offering to pay, to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge and consent of their employers, large sums of money as an inducement to influence their said employers to purchase or contract to purchase from the respondent, varnish and kindred products, or to influence such customers to refrain from dealing, or contracting to deal with competitors of the respondent.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, the Twin City Varnish Co. of Illinois, has been, and now is, using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in this respect, and the respondent having entered its appearance by George W. Weber, its president, and having filed its answer admitting that the matters and things alleged in the said complaint are true in the manner and form therein set forth, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony, the Commission makes this report and findings as to the facts and conclusions:

### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Twin City Varnish Co. of Illinois, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its home office located at the city of Chicago, in said State of Illinois, now and for more than one year last past engaged in the business of selling varnish and kindred products generally in commerce throughout the States and Territories of the United States in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That for more than one year last past the respondent has given and offered to give employees of both its customers and prospective customers and its competitors' cus-

tomers and prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent varnish and kindred products or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, large sums of money.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 1 and 2, and each and all of them, are under the circumstances therein set forth unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondent having entered its appearance, by George W. Weber, its president, and having filed its answer admitting that the matters and things alleged and contained in the said complaint are true in the manner and form therein set forth, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all rights to the introduction of such testimony, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof. Now, therefore.

*It is ordered* that the respondent, the Twin City Varnish Co. of Illinois, and its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly.

Giving or offering to give employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, as an inducement to influence their employers to purchase, or to contract to purchase, from the respondent varnish and kindred products, or to influence such employers to refrain from dealing, or contracting to deal, with competitors of the respondent, without other consideration therefor, money.

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## FEDERAL TRADE COMMISSION v. THE ROYAL VARNISH CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER  
26, 1914.

Docket No. 152.—July 22, 1918.

### SYLLABUS.

Where a corporation engaged in the manufacture and sale of varnish and kindred products gave and offered to give to employees of customers and of competitors' customers gratuities, entertainment, and money, as an inducement for them to influence their employers to purchase its goods or to refrain from dealing with its competitors: *Held*, That such payments and offers to pay, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Royal Varnish Co., hereinafter referred to as respondent, for more than a year prior to January 1, 1918, used unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in re-

spect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the Royal Varnish Co., is a corporation, organized and existing and doing business under and by virtue of the laws of the State of Ohio, having its principal office and place of business in the city of Toledo, in said State, and is now and for more than one year last past has been engaged in manufacturing and selling varnish and kindred products throughout the States and Territories of the United States, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That in the course of its business of manufacturing and selling varnish and kindred products throughout the States and Territories of the United States the respondent for more than one year prior to January 1, 1918, systematically and on a large scale gave and offered to give to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to influence their employers to purchase or contract to purchase from the respondent varnish and kindred products, without other consideration therefor, gratuities such as liquors, cigars, meals, theater tickets, valuable presents, and entertainment.

PAR. 3. That in the course of its business of manufacturing and selling varnish and kindred products throughout the States and Territories of the United States the respondent for more than one year prior to January 1, 1918, systematically and on a large scale secretly paid and offered to pay to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge and consent of their employers, sums of money as an inducement to influence their said employers to purchase or contract to purchase from the respondent varnish and kindred products, or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondent.



## REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, The Royal Varnish Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in this respect and the respondent having entered its appearance by George P. Hahn, Esq., its attorney, duly authorized to act in the premises, and having filed its answer admitting that the matters and things alleged in the said complaint are true in the manner and form therein set forth, except that respondent denies that said matters and things were done systematically or on a large scale, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings, as to the facts, and its order disposing of this proceeding, without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony, the Commission makes this report and findings as to the facts and conclusions:

### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Royal Varnish Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its home office located at the city of Toledo, in said State of Ohio, now and for more than one year last past engaged in the business of manufacturing and selling varnish and kindred products generally in commerce throughout the States and Territories of the United States in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That for more than one year last past the respondent has given and offered to give employees of both its customers and prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent varnish and kindred products or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, gratuities consisting of liquors, cigars, meals, theater tickets, and other personal property.

PAR. 3. That for more than one year last past the respondent has given and offered to give employees of both its customers and prospective customers and its competitors' customers and prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent varnish and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, entertainment consisting of amusements and diversions of various kinds and descriptions.

PAR. 4. That for more than one year last past the respondent has given and offered to give employees of both its customers and prospective customers and its competitors' customers and prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent varnish and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, sums of money.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 2, 3, 4 and each and all of them, are under the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent having entered its appearance by George P. Hahn, Esq., its attorney, duly authorized to act in the premises and having filed its answer admitting that the matters and things alleged and contained in the said complaint are true in the manner and form therein set forth, except that respondent denies that said matters and things were done systematically, or on a large scale, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof. Now, therefore,

*It is ordered* that the respondent, the Royal Varnish Co., and its officers, directors, agents, servants, and employees cease and desist from directly or indirectly:

1. Giving or offering to give employees of its customers or prospective customers or those of its competitors' customers or prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent varnish and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, gratuities, such as liquors, cigars, meals, theater tickets, valuable presents, and other personal property.

2. Giving and offering to give to employees of its customers and prospective customers or those of its competitors' customers or prospective customers, as an inducement to in-

fluence their employers to purchase or contract to purchase from the respondent varnish and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, entertainment, consisting of amusements or diversions of any kind whatsoever.

3. Giving or offering to give employees of its customers or prospective customers or those of its competitors' customers or prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent varnish and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, money.

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## FEDERAL TRADE COMMISSION *v.* THE CUDAHY PACKING CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 2 OF THE ACT OF CONGRESS APPROVED OCTOBER 15,  
1914, AND THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT  
OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 20.—July 26, 1918.

### SYLLABUS.

Where a corporation, engaged in the manufacture and sale of cleansing powder, the sales of which were substantial and formed an important item of commerce—

#### I.

Sold its product principally to certain jobbers and to a limited extent to certain other selected dealers, both of whom it termed distributing agents, at prices termed "distributing agents' prices"; also sold to concerns other than those designated as distributing agents in the same quantities at higher prices, termed "general sales list prices," occasionally at distributors' prices, and, in some instances, at special prices, such differences in price not being within the provisos of section 2 of the Clayton Act:

*Held*, That such discrimination in price constituted a violation of section 2 of the act of October 15, 1914.

## II.

- (a) Sold its product principally to certain jobbers and to a limited extent to certain other selected dealers, both of whom it termed "distributing agents," at prices termed "distributing agents' prices"; declined generally to sell to concerns other than these so-called distributing agents in the same quantities except at prices higher than those charged its "distributing agents" (the prices charged dealers other than these distributing agents being so high that they did not afford the dealer a net profit on their sale, and especially did not permit them to sell at cut prices and make a profit), though at times it sold at the most favored prices to others than its regular distributors; and sold in some instances at special prices, the differences in the prices charged not being within the provisos of section 2 of the Clayton Act;
- (b) Caused those whom it termed "distributing agents" to resell its product at prices fixed by it, and in pursuance of its price-maintenance plan—
  - (1) Published lists showing prices at which goods were to be resold, and stated therein that "distributing agents," or those to whom it sold at the most favorable prices, must conform to its selling policy;
  - (2) Sold only to new customers at its most favorable prices, known as "distributing agents' prices," who, after investigation by its salesmen, were reported as being in harmony with its selling policy;
  - (3) Ceased to sell at its most favorable prices to those dealers who failed to maintain the resale prices fixed by it, though at times it resumed selling them at such prices where they specifically agreed to maintain its resale prices, or where it was otherwise given reason to believe that such dealers would thereafter conform to its price-maintenance plan;
  - (4) Adopted a system of marking to identify each container of its goods and by its salesmen traced dealers selling at less than its fixed resale prices, its salesmen at times in the course of such tracing examining goods in the warehouses of retailers and on occasions impersonating retailers, sometimes with their consent, for the purpose of obtaining information;
  - (5) Refused occasionally to sell its product on any terms to those who failed to maintain its fixed resale price;
- (c) Instructed its salesmen engaged in the solicitation of "turn-over" orders to refuse the same when purchasers desired them filled through a dealer who did not maintain its fixed resale price, and to request the purchaser to order through some other jobber or wholesaler;

*Held*, That such system of price maintenance, substantially as described, constituted an unfair method of competition, in violation of section 5 of the act of September 26, 1914.

## COMPLAINT.

## I.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that the Cudahy Packing Co., hereinafter referred to as respondent, has been and is violating the provisions of section 2 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, the Cudahy Packing Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, having its principal office and place of business in the city of Chicago, in said State, and is now and was at all the times hereinafter mentioned engaged in manufacturing a cleansing product called "Old Dutch Cleanser," and in the sale and shipment of such commodity to persons, copartnerships, and corporations in other States, Territories, and the District of Columbia.

PAR. 2. That the respondent, the Cudahy Packing Co., for several years last past, in the course of interstate commerce, has discriminated in price, and is now discriminating in price, between different purchasers of "Old Dutch Cleanser," which product is sold for use, consumption, or resale within the United States and the Territories thereof, or the District of Columbia, and that the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in this line of commerce.

## II.

And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Cudahy Packing Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce, in violation of section 5 of the act of Congress approved September 26, 1914, entitled "An act to

create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the Cudahy Packing Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, having its principal office and place of business in the city of Chicago, in said State, and is now, and was at all times hereinafter mentioned, engaged in manufacturing a cleansing product called "Old Dutch Cleanser," and in the sale and shipment of such commodity to persons, copartnerships, and corporations in other States, Territories, and the District of Columbia.

PAR. 2. That the respondent, The Cudahy Packing Co., has adopted and maintains a system of fixing prices at which its product, "Old Dutch Cleanser," shall be resold by such jobbers and wholesalers, with the effect of securing the trade of jobbers and wholesalers and of enlisting their active cooperation in enlarging the sale of its price-maintained product to the prejudice of competitors who do not fix and require the maintenance of the resale prices of their product, and with the effect of eliminating competition in price among the jobbers and wholesalers in its goods, and thereby depriving jobbers and wholesalers of their right to sell such goods at such prices as they may deem adequate and warranted by their selling efficiency, and with other effects; and that the respondent, as means of making effective its system of fixing resale prices and of inducing and coercing its customers to maintain such resale prices, for more than two years last past (a) has entered and does enter into agreements and understandings with jobbers and wholesalers that they shall maintain the resale prices fixed by the respondent; (b) has threatened and does threaten to refuse to sell to jobbers and wholesalers if they fail to maintain the resale prices fixed by the respondent and has refused and does refuse to sell to jobbers and wholesalers who fail to maintain the resale prices fixed by the respondent; (c) has sold and does sell at lower prices such product to jobbers and wholesalers

who agree to maintain the resale prices so fixed by the respondent than it sells or offers to sell such product to jobbers and wholesalers who do not maintain such resale prices, and at a price so high to the jobbers and wholesalers who do not maintain such resale prices that they can not, as is well known to the respondent, make a profit upon the resale thereof; (d) by divers means has induced or compelled and does induce or compel jobbers and wholesalers to refrain from selling its product to other jobbers and wholesalers who do not maintain the resale prices fixed by the respondent; (e) has caused and does cause the diversion of retailers' orders, obtained by its salesmen, from jobbers and wholesalers preferred by such retailers and who do not maintain the resale prices fixed by the respondent to jobbers and wholesale who do maintain such resale prices; (f) has employed and does employ divers other means.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, The Cudahy Packing Co., has been, and now is, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and has been and is violating the provisions of section 2 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and that a proceeding by it in respect of such alleged violation of section 5 of the act of September 26, 1914, would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by Thomas Creigh and Gilbert H. Montague, its attorneys, and having duly filed its answer admitting certain of the allegations of said complaint and denying certain other thereof, and particularly denying that respondent has ever violated any of the provisions of the acts of Congress above men-



tioned or of any other law, and the Commission having offered testimony in support of the charges of said complaint, and respondent having rested its case at the close of the Commission's case, and counsel for both parties having waived the filing of briefs or the hearing of argument on the exceptions and on the merits, the Commission, having duly considered the record, and being fully advised in the premises, now makes this its report and findings as to the facts and conclusions:

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, the Cudahy Packing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, having its principal office and place of business at the city of Chicago, in the State of Illinois, and is the successor to the Cudahy Packing Co., of Illinois.

PAR. 2. That respondent, the Cudahy Packing Co., is now, and for more than two years last past has been, engaged in commerce among the several States, Territories, and the District of Columbia of the United States, in the manufacture, sale, and distribution of a powdered cleanser known as "Old Dutch Cleanser."

PAR. 3. That respondent, the Cudahy Packing Co., sells Old Dutch Cleanser principally to jobbers, but also, to a limited extent, to certain other selected dealers, both being known as distributing agents, at prices hereinafter referred to as distributing agents' prices, and that it also sells to concerns other than those classified or designated as distributing agents in the same quantities at higher prices than hereinafter referred to as general sales list prices.

PAR. 4. That the amount of Old Dutch Cleanser manufactured, sold, and distributed by respondent, the Cudahy Packing Co., has been and is substantial, that the same forms an important item of commerce among the several States, Territories, and the District of Columbia of the United States, and that in such distribution respondent utilizes the services of about 4,000 of the so-called distributing agents.

PAR. 5. That in pursuance of its price-maintenance plan respondent discriminates, and for more than two years last past has discriminated, between customers in the prices at which it sells "Old Dutch Cleanser" in the course of such commerce, in that it has—

(a) Made sales to jobbers and other wholesalers at both general sales list prices and distributing-agents' prices.

(b) Made sales to cooperative organizations at both general sales list prices and distributing agents' prices.

(c) Made sales among retail organizations at distributing-agents' prices and at general sales list prices and at special prices.

That none of the aforesaid discriminations comes within any of the exceptions or provisos of section 2 of the act approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and that in so far as said discriminations accomplish their purpose, their effect may be and is to eliminate competition in price among jobbers and other dealers in a line of commerce, to wit, in the sale of powdered cleansers, and especially in the sale of "Old Dutch Cleanser."

PAR. 6. That respondent causes, and for more than two years last past has caused, its so-called distributing agents to resell "Old Dutch Cleanser" at general sales list prices:

(a) By repeatedly setting forth in its distributing agents' price list its resale prices, and by stating that distributing agents must conform to the selling policy of the company;

(b) By repeatedly withdrawing, as distributing agents, jobbers, wholesalers, and other dealers classed as distributing agents who fail to maintain the general sales list prices of respondent, and by quoting and in some instances selling jobbers so withdrawn at the general sales list price;

(c) By repeatedly reinstating as distributing agents jobbers, wholesalers, and other dealers withdrawn as aforesaid for failing to maintain the resale price—

(1) Upon the basis of letters from such jobbers, wholesalers, and other dealers to respondent specifically stating that they will agree to maintain the general sales list prices of respondent;

(2) Upon the basis of letters stating in effect that such jobbers, wholesalers, and other dealers understand the selling policy of respondent and will act in harmony therewith; and

(3) Upon the basis of reports from salesmen to the effect that they have interviewed jobbers, wholesalers, and other dealers withdrawn as distributing agents and explained to them respondent's selling policy and that the said jobbers and dealers are in harmony therewith and will conform thereto.

(d) By requiring its salesmen to investigate applications for distributing agents' terms and to report to the home office whether the applicant understands and is in harmony with the selling policy of respondent;

(e) By repeatedly adding to its so-called distributing agents concerns reported as aforesaid by its salesmen as being in harmony with its selling policy.

(f) By refusing in occasional instances to sell to jobbers, wholesalers, and other dealers withdrawn as aforesaid for failing to resell its products at general sales list prices.

PAR. 7. That respondent maintains a large force of specialty salesmen, numbering over 100, whose duty it is to solicit from retailers orders to be turned over to and filled through jobbers or other wholesalers, which orders are customarily designated and known as "turnover orders"; that said salesmen are instructed, in soliciting turnover orders, to refuse to accept such orders where the retailer desires the same filled through a jobber or other wholesaler who sells at less than the general sales list prices of respondent, and to state to the retailer that they can not take an order for delivery through that jobber or other wholesaler, and to request him to name another; and that said salesmen, in soliciting such orders, in pursuance of these instructions, refuse and have refused to accept orders where retailers desired the same filled through jobbers or other wholesalers selling at less than general sales list prices, and request and have requested such retailers to name other jobbers or wholesalers.

PAR. 8. That respondent in frequent instances withdraws, and for more than two years last past has withdrawn, dis-

tributing agents' prices from jobbers and other wholesalers who have—

(a) Sold to other jobbers or wholesalers at less than general sales list prices.

(b) Filled orders pooled by several retailers when the jobbers or wholesalers have sold the same at quantity prices set out in the general sales list.

(c) Filled orders at quantity prices set out in the general sales list where the retailers require more than one delivery upon the quantity specified in the order.

PAR. 9. That respondent utilizes, and for more than two years last past has utilized, a system of key-symbols for identifying the cases containing Old Dutch Cleanser; that repeatedly, when instances of price cutting are reported to it, respondent instructs its salesmen to investigate; that in pursuance of these instructions, the salesmen aforesaid frequently trace the jobber or other wholesaler making the cut price by means of the key-symbols, which enable the identity of said jobber or other wholesaler to be ascertained; that in occasional instances respondent's salesmen, in tracing price cutting, have examined the stocks in the warehouses of retail dealers; have taken key-symbols from cases on the wagons of jobbers and other wholesalers delivering goods; have impersonated retailers, sometimes with their permission,\* in order to ascertain from jobbers and other wholesalers the prices at which they sell Old Dutch Cleanser, and have impersonated retailers for the purpose of obtaining the key-symbols from cases containing Old Dutch Cleanser.

PAR. 10. That individual jobbers and wholesalers, as shown by their letters, voluntarily state, and have stated, that they will support and cooperate with respondent in pushing its goods, and that they desire to deal with respondent on account of its policy in maintaining resale prices; and that jobbing and wholesale grocery trade associations have adopted resolutions indorsing price-maintained goods, which indorsements would include the goods of respondent company.

PAR. 11. That grocery jobbers and wholesalers handling respondent's goods repeatedly report, and have reported, to respondent price cutting in their respective localities, and in

many such instances report, and have reported specifically, the names of such price cutters.

PAR. 12. That jobbers' and other wholesalers' costs show great divergences, owing to different methods in selling, and also great divergences in the case of different concerns using the same methods of selling, owing to differences in selling expense, turnover, efficiency of management, and other factors.

That the costs of grocery jobbers and wholesalers selling by mail are in some instances as low as  $4\frac{1}{2}$  per cent expressed as a percentage of the cost of goods to the jobber, and the costs of cooperative grocery jobbing and wholesaling concerns are in some instances as low as 3 to  $3\frac{1}{2}$  per cent, expressed in the form of a percentage of the selling price of the goods.

That expressed in the form of a percentage of the net sales, the total costs or expense of jobbers and wholesalers selling according to customary jobbing methods range from 6.3 per cent to 10.71 per cent, and that the common figure (i. e., the predominant, typical, and most frequent figure and the one around which the figures of all wholesalers center) is 8 per cent; that some of such concerns have interest charges which range from 0.4 per cent to 3.03 per cent on net sales, and that the common figure is 1.5 per cent.

That the gross profits of concerns selling according to customary jobbing methods show at least as great variations as from 7.7 to 17.2 per cent on net sales; and in the majority of instances their gross profit is between 10.5 per cent and 13.4 per cent; that the rate of stock turn of grocery jobbers and other wholesalers selling according to customary jobbing methods varies from about one to twelve times a year.

PAR. 13. That for more than two years prior to January 1, 1918, the gross profit margins (i. e., the difference between the cost of Old Dutch Cleanser from respondent and the price at which jobbers or other wholesalers were required to resell the same) allowed by respondent varied, depending upon the quantity in which the jobber or wholesaler bought, from 11.1 to 13.9 per cent on the said resale

price fixed by the respondent for sales of less than five cases.

That retailers' orders and purchases of Old Dutch Cleanser are in the great majority of instances for less than five cases, and that large orders by them are comparatively exceptional.

PAR. 14. That the gross profit margins of jobbers and other wholesalers handling respondent's goods are adjusted as aforesaid, in order to secure a large number of jobbers and other wholesalers to handle its product, and that the margins aforesaid are greater than necessary to enable many relatively low-cost and efficient jobbers and wholesalers to resell and make a profit.

PAR. 15. That respondent, by its policy of maintaining prices and discriminating and refusing to sell to jobbers and other wholesalers failing to adhere to such prices, endeavors to protect and has protected the relatively higher-cost and less efficient jobbers and other wholesalers, constituting the bulk of the jobbing and wholesale trade, in the gross-profit margins fixed as aforesaid against the competition of relatively lower-cost and more efficient jobbers and other wholesalers.

PAR. 16. That the effect of the price fixing aforesaid has been and is:

(a) To secure for respondent, the Cudahy Packing Co., on its Old Dutch Cleanser the trade of jobbers and other wholesalers, and especially the relatively higher-cost and more inefficient jobbers and other wholesalers, constituting the bulk of the jobbing and wholesale trade, and to enlist their active support and cooperation in enlarging the sale of its price-maintained cleanser, to the prejudice of competing manufacturers who do not fix, require, or enforce the maintenance of resale prices upon their cleansers, thereby protecting such jobbers and other wholesalers against the price competition of other jobbers and wholesalers, and especially the relatively lower-cost and more efficient establishments;

(b) To tend to force manufacturers who do not fix, require, or enforce the maintenance of resale prices and who compete with respondent in the sale of powdered cleansers,

also to inaugurate and enforce a system of maintenance of resale prices upon their powdered cleansers, in order to offset the preference of jobbers and other wholesalers for respondent's price-maintained cleanser and to enable manufacturers who do not maintain resale prices upon powdered cleansers to compete upon more equal terms with respondent;

(c) To eliminate competition in prices among jobbers and wholesalers handling Old Dutch Cleanser, thereby interfering with many such jobbers and other wholesalers, and especially the relatively lower-cost and more efficient establishments, in their sales of such cleanser at such prices as they may deem adequate and as are warranted by their costs, selling efficiency, and existing trade conditions;

(d) To compel the public, or such portion thereof as require or prefer Old Dutch Cleanser, to pay prices therefor based on a gross profit margin fixed, as aforesaid, according to the costs of the relatively higher-cost and less efficient establishments, constituting the bulk of the jobbing and wholesale trade, instead of a price based upon the competition of jobbers and other wholesalers with widely varying stock turns, costs and efficiency.

#### CONCLUSION.

That the acts and conduct set forth in paragraph 5 of the foregoing findings are, and each of them is, under the circumstances therein set forth, in violation of the provisions of section 2 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes"; and that the methods of competition set forth in the findings are, and each of them is, under the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondent having entered its appearance by Thomas Creigh and Gilbert H. Montague, its attorneys, and having duly filed its answer admitting certain of the allegations of said complaint and denying certain other allegations thereof, and particularly denying that respondent has ever violated any of the provisions of the acts of Congress mentioned in said complaint or any of the provisions of any other law; and the Commission having offered testimony in support of the charges of said complaint, and respondent having rested its case at the close of the Commission's case, and the Commission, on the date hereof, having made and filed its report containing its findings as to the facts and its conclusions that respondent has violated section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and section 2 of an act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered* that respondent, the Cudahy Packing Co., and its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly recommending, requiring, or by any means whatsoever bringing about, the resale by dealers of Old Dutch Cleanser according to any system of prices fixed or established by respondent, and more particularly by any or all of the following means:

1. Entering into contracts, agreements, or understandings with such dealers to the effect that such dealers, in reselling Old Dutch Cleanser, will adhere to any system of prices fixed or established by respondent;
2. Securing from such dealers contracts, agreements, or understandings that they will adhere to any such system of prices;
3. Refusing to sell to any such dealers because they fail to adhere to any such system of prices;



4. Discriminating in prices against such dealers because they fail to adhere to any such system of prices;

5. Discriminating in prices in favor of such dealers because they adhere to any such system of prices:

*Provided*, That nothing herein contained shall prohibit respondent from issuing price lists or printing prices in its advertising or upon containers of Old Dutch Cleanser so long as respondent shall refrain from directly or indirectly recommending, requiring, or by any means whatsoever bringing about, the resale of Old Dutch Cleanser at such prices; and

*Provided further*, That nothing herein contained shall prohibit respondent from selling to or soliciting orders from dealers directly at such prices, or at any other prices fixed by the party through whom such orders are filled.

### FEDERAL TRADE COMMISSION *v.* STANLEY BOOKING CORPORATION.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26,  
1914, AND OF THE ALLEGED VIOLATION OF SECTION 3 OF AN  
ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket No. 140—September 10, 1918.

#### **SYLLABUS.**

Where a corporation engaged in the business of exhibiting, leasing, licensing, booking, and dealing in moving-picture films generally—

- (a) Procured the cancellation of contracts between competitors and the producers of films;
- (b) Procured films which competing exhibitors had previously announced would be shown by them and, for the purpose and with the effect of hindering, harassing, and embarrassing such competitors, exhibited the same in advance of the dates announced and for a lower price of admission;
- (c) Made contracts for the lease and sale of films upon the condition, agreement, or understanding that the lessees or purchasers thereof would not exhibit, use, or deal in the films of its competitors;
- (d) By threats and intimidation induced the owners and operators of moving-picture theaters to pay it a commission on films booked by producers and exchanges other than itself;
- (e) Induced independent exhibitors to book through it by means of threats that unless they did so their supply of films would be cut off; and

(f) Induced producers and exchanges to cease supplying competitors with films, by means of threats that unless they did so it would withdraw its patronage:

*Held*, That such acts constituted unfair methods of competition, in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Stanley Booking Corporation, hereinafter referred to as respondent, has been, and is, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PAR. 1. That the respondent, the Stanley Booking Corporation, is now, and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of New York, having its principal office and place of business located in the city of Philadelphia, State of Pennsylvania, now, and for more than two years last past engaged in the business of exhibiting and dealing in moving-picture films, among the various States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Stanley Booking Corporation, in the conduct of its business acts in the capacity of a booking agency, which agency procures and books moving-picture films for various exhibitors of moving-picture films on a commission basis, and purchases and leases moving-picture films from producing companies of moving-picture films in various States of the United States, the Territories thereof, and the District of Columbia, causing the same to be transported through and to other States and Territories of the United States and the District of Columbia, where the

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same are exhibited and displayed to the general public; that after such films are so purchased or leased they are continuously moved to, from, and among other States and Territories of the United States and the District of Columbia, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said films between and among the various States of the United States, the Territories thereof, and the District of Columbia, and especially through and to the city of Philadelphia, State of Pennsylvania, and therefrom to and among other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That the respondent, Stanley Booking Corporation, in the conduct of its business, leases or purchases certain advertising matter to accompany said moving-picture films from designers and manufacturers of such advertising matter, causing the same to be transported to the various exhibitors of moving-picture films in the States and Territories of the United States and the District of Columbia; that after such advertising matter is so leased or purchased it is continuously moved to, from, and among other States and Territories of the United States and the District of Columbia, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said advertising matter between and among the various States of the United States, the Territories thereof, and the District of Columbia, and especially through and to the city of Philadelphia, State of Pennsylvania, and therefrom to and among other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 4. That the respondent, Stanley Booking Corporation, in the conduct of its business owns, operates, and controls numerous theaters in various cities throughout the States of the United States, the Territories thereof, and the District of Columbia, wherein moving-picture films are exhibited and displayed to the public, and within the last year with the intent, purpose, and effect of stifling and suppressing competition in the sale and leasing of moving-picture films in interstate commerce, has by divers means and methods caused contracts for the exhibition of certain mov-

ing-picture films made and entered into by and between certain of its competitors similarly engaged and producers of moving-picture films to be canceled and broken, all of which was calculated and designed to, and did, hinder, harrass, and embarrass such competitors in the conduct of their business.

PAR. 5. That the respondent, Stanley Booking Corporation, within the last year, with the purpose, intent, and effect of stifling and suppressing competition in the sale and leasing of moving-picture films in interstate commerce, has procured certain moving-picture films which had been announced and advertised for exhibition and display by certain of its competitors, and has exhibited and displayed the same in advance of the dates so advertised and announced by such competitors at theaters in the neighborhood of and in close proximity to those of such competitors, at and for a price of admission less than that advertised and announced by its competitors aforesaid.

PAR. 6. That the respondent, Stanley Booking Corporation, with the intent, purpose, and effect of stifling and suppressing competition in the sale and leasing of moving-picture films in interstate commerce, has leased and sold and made contracts for the leasing and sale of moving-picture films within the year last past on the condition, agreement, or understanding that the lessee or purchaser thereof shall not exhibit, use, or deal in moving-picture films produced, handled, or dealt in by competitor or competitors of the lessor or seller.

PAR. 7. That the respondent, Stanley Booking Corporation, with the intent, purpose, and effect of stifling and suppressing competition in the sale and leasing of moving-picture films in interstate commerce, has for more than one year last past, by divers threats and different methods of intimidation, compelled the owners and operators of numerous moving-picture theaters in different States of the United States, the Territories thereof, and the District of Columbia, to pay this respondent a sum equal to 10 per cent of the cost of all moving-picture films of various producers booked directly from said producers, exhibited and displayed by them in their various theaters.

PAR. 8. That the respondent, Stanley Booking Corporation, with the intent, purpose, and effect of stifling and suppressing competition in the sale and leasing of moving-picture films in interstate commerce for more than one year last past, has compelled the owners and operators of numerous theaters exhibiting and displaying moving-picture films in different localities within the States of Pennsylvania, New Jersey, and Delaware, to book such films exhibited by them through this respondent by threatening to cut off their supply of such moving-picture films.

PAR. 9. That the respondent, Stanley Booking Corporation, with the intent, purpose, and effect of stifling and suppressing competition in the sale and leasing of moving-picture films in interstate commerce within the last year, has, by threats of withdrawal of its patronage and divers methods of intimidation, compelled producers of moving-picture films and exchanges handling moving-picture films to cease supplying certain of its competitors with moving-picture films.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged it had reason to believe that the above-named respondent, the Stanley Booking Corporation, has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes," and that a proceeding by it in that respect will be to the interest of the public and fully stating its charges in this respect, and the respondent having entered its appearance by Stern & Wolf, its attorneys, duly authorized and empowered to act in the premises and having filed its answer admitting certain of the matters and things alleged and set forth in the said complaint and denying others therein contained, and the cause having been referred to W. T. Roberts, an examiner for the Federal Trade Commission, with instructions to hear the testimony in the case and re-

port his findings to the said Commission, and the said examiner pursuant to notice having held a hearing in this matter in the city of Philadelphia, State of Pennsylvania, on the 19th and 20th days of August, 1918, at which time and place the parties hereto, after the said examiner having heard part of the testimony offered by the Federal Trade Commission, before the said examiner entered into an agreed statement of facts, wherein it was stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony and upon the same forthwith proceed to make and enter its report stating its findings as to the facts and its conclusions and its order, and the said agreed statement of facts having been heretofore duly filed with this Commission, the Commission now makes this its report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Stanley Booking Corporation, is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at the city of Philadelphia, in the State of Pennsylvania.

PAR. 2. That the respondent, Stanley Booking Corporation, is now and for more than four years last past has been engaged in the business of exhibiting, leasing, licensing, booking, and dealing in moving-picture films generally in commerce throughout the States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 3. That the respondent, Stanley Booking Corporation, in the conduct of its business acts in the capacity of a booking agency, which agency procures and books moving-picture films by means of contracts for various exhibitors of moving-picture films on a commission basis, the said films being purchased and leased from the producing companies of moving-picture films and film exchanges representing such producing companies, the said films are then caused to

be transported, and the respondent further causes certain advertising matter to accompany the moving-picture films to be transported along with the said films through and to other States and Territories of the United States and the District of Columbia, where the same are exhibited and displayed to the general public.

PAR. 4. That the respondent, Stanley Booking Corporation, in the conduct of its business has employed and used the following unfair methods of competition within three years last past and prior to February, 1918:

(a) Cancellation of contracts for the exhibition of certain moving-picture films made and entered into by and between certain of its competitors similarly engaged and the producers of moving-picture films.

(b) Procured certain moving-picture films which had been announced and advertised for the exhibition and display by its competitors and has exhibited and displayed the same in advance of the dates so advertised and announced by such competitors at theaters in the neighborhood of those of such competitors at and for a price of admission less than that advertised by its competitors, all of which was calculated and designed to and did hinder, harrass, and embarrass such competitors in the conduct of their business.

(c) Has made contracts for the leasing and sale of moving-picture films on the condition, agreement, or understanding that the lessee or purchaser thereof shall not exhibit, use, or deal in moving-picture films produced, handled, or dealt in by a competitor or competitors of respondent, the effect of which may be to substantially lessen competition or tend to create a monopoly.

(d) By divers threats and different methods of intimidation has induced the owners and operators of certain moving-picture theaters to pay this respondent a sum equal to 10 per cent of the cost of all moving-picture films of various producers booked *directly* from said producers or exchanges.

(e) By threatening to cut off the supply of moving-picture films to certain of its competitors has by such threats induced said competitors to book and obtain moving-picture films through this respondent.

(f) By threats of withdrawal of its patronage has induced the producers of moving-picture films and film exchanges handling moving-picture films to cease supplying certain of its competitors with moving-picture films.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts under the circumstances therein set forth are unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein and the respondent having entered its appearance by Stern & Wolf, its attorneys, duly authorized to act in the premises and having filed its answer admitting certain of the allegations in the said complaint and denying others therein contained and thereafter having entered into an agreed statement of facts wherein it was agreed and stipulated that the Commission should proceed forthwith upon such agreed statement of facts to make and enter its report stating its findings as to the facts and its order disposing of this proceeding without the introduction of further testimony and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof. Now, therefore,

*It is ordered* that the respondent, Stanley Booking Corporation, of New York, and its officers, directors, representatives, agents, servants, and employees, cease and desist from directly or indirectly:



(a) Procuring the cancellation of contracts for the exhibition of moving-picture films made and entered into by and between its competitors and the producers of moving-picture films.

(b) Procuring moving-picture films which have been announced and advertised for exhibition and display by its competitors and exhibiting and displaying the same in advance of the dates so advertised and announced by such competitors at theaters in the neighborhood of those of such competitors, where the procuring of moving-picture films and exhibition of same is done to hinder, harass, and embarrass competitors.

(c) Making and entering into contracts for the leasing and sale of moving-picture films on the condition, agreement, or understanding that the lessee or purchaser thereof shall not exhibit, use, or deal in moving-picture films produced, handled, or dealt in by a competitor or competitors of respondent.

(d) Making threats and employing methods of intimidation to induce and compel owners and operators of moving-picture theaters to pay it, the respondent, a sum equal to 10 per cent of the cost of moving-picture films booked directly from the producer of said films or the film exchanges, or to pay to it, the respondent, any sums whatsoever on moving-picture films booked directly from the producer of said films or from the film exchanges.

(e) Making threats against independent exhibitors of moving-picture films that unless such exhibitors book through this respondent their supply of moving-picture films will be cut off.

(f) Threatening producers of moving-picture films and film exchanges with the withdrawal of this respondent's patronage in order to induce the said producer and film exchanges to cease supplying certain of their competitors with moving-picture films.

FEDERAL TRADE COMMISSION *v.* E. E. GRAY CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26,  
1914.

Docket No. 166.—September 25, 1918.

## SYLLABUS.

Where a corporation engaged in the sale and distribution of coffees, with the purpose and effect of confusing, misleading, and deceiving the purchasing public, sold a mixture of "Santos" and "Columbian" coffees, under the name or brand "M and J," in competition with genuine Mocha and Java coffees, without so qualifying such trade name or brand as to show that the coffee sold was not composed of Mocha and Java coffee:

*Held*, That the use of such trade name, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

## COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the E. E. Gray Co., hereinafter referred to as respondent, has been and now is using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That now and at all times hereinafter mentioned the respondent, E. E. Gray Co., is and was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, having its principal factory, office, and place of business in the city of Boston, State of Massachusetts, and that said corporation is now and for more than two years last past has been engaged in the business of purchasing large quantities of coffee in different States of the United States and in foreign countries, and causing the same to be transported from the point

of purchase through other States of the United States to its factory located at Boston, Mass., where said coffee so purchased and transported is now and for more than two years last past has been roasted and packed by respondent and then sold and shipped by respondent to purchasers in various States and Territories of the United States and in the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in direct competition with other persons, firms, copartnerships and corporations engaged in the purchase and sale of coffee, respondent is now and for more than two years last past has been engaged in purchasing, roasting, packing, selling, and shipping from its factory in Boston, Mass., to purchasers in various States and Territories of the United States and in the District of Columbia, certain grades, blends, or mixtures of coffee composed of what are generally known as "Santos" coffee and "Columbia" coffee, which grades, blends, or mixtures respondent is now and for more than two years last past has been packing, selling and shipping to purchasers in various States and Territories of the United States and in the District of Columbia under the trade name, trade-mark, or brand "M & J" coffee; that after such grades, blends, or mixtures of "Santos" coffee and "Columbia" coffee are roasted and packed under the trade name, trade-mark, or brand "M & J" coffee, they are continuously moved to, from, and among the other States of the United States, and there is continuously and has been at all times hereinafter mentioned, a constant current of trade in commerce in said coffee between and among the various States of the United States, and especially to and through the city of Boston, State of Massachusetts, and therefrom to and through the District of Columbia.

PAR. 3. That the aforesaid trade name, trade-mark, or brand "M & J" coffee, so used by respondent in the sale of coffee composed of Santos and Columbia coffees, is now and for more than two years last past has been used by the respondent company with the intent and purpose of confusing and deceiving and misleading the public into the belief that the said coffee so sold under the said brand, trade name, or

trade-mark was and is composed wholly of Mocha and Java coffees and that the natural result of the use of said brand, trade name, or trade-mark was and is to confuse, mislead, and deceive purchasers thereof and the public into the belief that said coffee so sold under said trade name, trade-mark, or brand is Mocha and Java coffees and that the use of said trade name, trade-mark, or brand does deceive purchasers thereof and the public into the belief that said coffee so sold under said trade name, trade-mark, or brand "M & J" coffee is Mocha and Java.

PAR. 4. That the respondent is now and for more than two years last past has been wrongfully using the aforesaid trade name, trade-mark, or brand "M & J" coffee with the purpose, intent, and effect of suppressing and stifling competition in the sale of Mocha and Java coffees in interstate commerce.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein in which it is alleged that it had reason to believe that the above-named respondent, E. E. Gray Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in this respect will be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered its appearance by Barry & Bucknam, its attorneys, duly authorized and empowered to act in the premises, and having filed its answer admitting certain of the matters and things alleged and set forth in the said complaint and denying others therein contained, and it being desirous to bring the matter to a conclusion as expeditiously as possible, an agreed statement of facts was entered into, wherein it was stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and to be taken in



## CONCLUSION.

That the method of competition set forth in the foregoing findings as to the facts is under the circumstances therein set forth an unfair method of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein and the respondent having entered its appearance by Barry & Bucknam, its attorneys, duly authorized and empowered to act in the premises and having filed its answer admitting certain of the matters and things alleged and contained therein and denying others and having entered into an agreed statement of facts and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to the facts and its order disposing of this proceeding, and the Commission having made and filed its report containing its findings as to the facts and its conclusion that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part thereof. Now, therefore,

*It is ordered*, that the respondent, E. E. Gray Co., of the city of Boston, State of Massachusetts, and its officers, directors, agents, servants, and employees cease and desist from employing, using or applying the trade name, trade-mark, or brand "M & J" in the sale and advertising of coffee composed of "Santos" and "Columbian" coffees or any other grades of coffee (except Mocha and Java) unless such trade name, trade-mark, or brand "M & J" is so qualified as to show that the coffee sold under said trade name, trade-mark, or brand is not composed of Mocha and Java coffees. Such qualifying words shall be set forth dis-

tinctly, definitely, and clearly, so that the natural result of the use of the said brand, trade name, or trade-mark will not confuse, mislead, and deceive purchasers thereof and the public into the belief that the said coffee so sold under the said trade name, trade-mark, or brand is Mocha and Java coffees.

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FEDERAL TRADE COMMISSION *v.* AMERICAN  
AGRICULTURAL CHEMICAL CO. AND THE  
BROWN CO. (INC.)

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF ALLEGED VIOLATION OF SECTION 7 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket No. 79.—October 8, 1918.

SYLLABUS.

Where manufacturers offered to purchase, and purchased, raw materials used in the manufacture of their products at prices unwarranted by trade conditions and so high as to be prohibitive to small competitors in certain areas, such prices being calculated, designed, and tending to destroy such small competitors, whereby competition in bidding for such raw materials was to be eliminated; and Where a manufacturer willfully caused its trucks to collide with automobiles of its competitors which were following such trucks for the purpose of spying upon its business and customers, such collisions being calculated and designed to damage and damaging such automobiles as to hinder, delay, and embarrass said competitors in their business;

*Held*, That such acts constituted unfair methods of competition, in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

I. The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the American Agricultural Chemical Co. and the Brown Co., hereinafter referred to as the respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a

Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That the respondent, American Agricultural Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located at the city of New York, in the State of New York, and that the respondent, The Brown Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at the city of Trenton, in the State of New Jersey; that these respondents are now and have been at all times hereinafter mentioned engaged in the business of manufacturing fertilizer and refining animal fats and selling their products throughout the States and Territories of the United States, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of their business, respondents purchase large amounts of raw materials in different States of the United States, and cause the same to be transported through other States to their factories where they are made or manufactured into the finished product and then sold and shipped to purchasers in various States and Territories of the United States and the District of Columbia; that after such products are so manufactured, they are continuously moved to, from and among other States of the United States, and there is continuously and has been at all times hereinafter mentioned, a constant current of trade in commerce in said products between and among the various States of the United States, and especially to and through the cities of New York, State of New York, and Trenton, State of New Jersey, and therefrom to and through other States of the United States.

PAR. 3. That the respondents, American Agricultural Chemical Co. and The Brown Co., with the purpose, intent, and effect of stifling and suppressing competition in the



manufacture and sale of their products in interstate commerce, for more than one year last past, while conducting their business generally at a profit, have, in certain local areas, purchased and offered to purchase raw materials necessary in the manufacture of their product at and for prices unwarranted by trade conditions and so high as to be prohibitive to small competitors in such areas; that such prices were calculated and designed to, and did, punish certain competitors in such areas who refused to become a party to a working arrangement offered by respondents to their competitors generally whereby competition in bidding for such raw materials was to be eliminated.

PAR. 4. That the respondents, through and by their agents, servants, and employees, have interfered with the business of certain of their competitors by willfully causing certain of respondents' trucks to collide with automobiles owned and operated by said competitors; that such interference was calculated and designed to, and did, so damage the machines of the competitors as to hinder, delay, and embarrass said competitors in the conduct of their business.

II. And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the American Agricultural Chemical Co., hereinafter referred to as respondent, has been and is violating the provisions of section 7 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That the respondent, American Agricultural Chemical Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located in the city of New York, State of New York, and that The Brown Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at the city of Trenton, State of New Jersey, and both of said corporations for many years have been, and still are, engaged in the business of manufacturing fertilizer and re-

fining animal fats and selling their products throughout the States and Territories of the United States, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That for several years last past the said corporations, in the conduct of their business, have and still do purchase large amounts of raw materials in different States of the United States and cause the same to be transported through other States to their factories where they are made or manufactured into the finished product and then sold and shipped to purchasers in various States and Territories of the United States and the District of Columbia; that after such products are so manufactured, they are continuously moved to, from, and among other States of the United States and there is continuously and has been at all times herein-after mentioned, a constant current of trade in commerce in said products between and among the various States of the United States and especially to and through the cities of New York, State of New York, and Trenton, State of New Jersey, and therefrom to and through other States of the United States.

PAR. 3. That the respondent, American Agricultural Chemical Co., a corporation engaged in commerce as aforesaid, did, during the year 1917, acquire the whole of the stock of the said, The Brown Co., a corporation also engaged in commerce as aforesaid, and that the said respondent, American Agricultural Chemical Co., ever since the time of said acquisition of said stock, has owned and still does own, the whole of the stock of the said The Brown Co., and that the effect of such acquisition may be to substantially lessen competition between the respondent, American Agricultural Chemical Co., and the said The Brown Co., or to restrain such commerce aforesaid in certain sections and communities or tend to create a monopoly in such line of commerce.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondents have been

and are using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the Federal Trade Commission in the said complaint having alleged that it had reason to believe from a preliminary investigation made by it, that The American Agricultural Chemical Co., respondent, has been, and is violating the provisions of section 7 of an act of Congress approved October 15, 1914, entitled, "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," and fully stating its charges in this respect, and the respondent, The American Agricultural Chemical Co., having entered its appearance by Gifford, Hobbs & Beard, its attorneys, and having filed its answer admitting certain of the matters alleged and set forth in the complaint and denying others therein contained, and having signed and filed an agreed statement of facts wherein it is stipulated and agreed that the Commission shall forthwith proceed upon such agreed statement of facts to make and enter its report, stating its findings as to the facts and its conclusions, and to enter its order disposing of this proceeding, without the introduction of testimony in support of the same, said respondent, The American Agricultural Chemical Co., forever waiving and relinquishing any and all right to the introduction of such testimony; and The Brown Co. (Inc.) (in the complaint designated as The Brown Co.), having entered its appearance by Gifford, Hobbs & Beard, its attorneys, and having filed its answer admitting certain of the matters alleged and set forth in the complaint, and denying others therein contained, and having signed and filed an agreed statement of facts wherein it is stipulated and agreed that the Commission shall forthwith proceed upon such agreed statement of facts to make and enter its report, stating its findings as to the facts and conclusions, and to enter its order disposing of this proceeding, without the introduction of testimony in support of the same, said respondent,

The Brown Co. (Inc.), forever waiving and relinquishing any and all right to the introduction of such testimony:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The American Agricultural Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business located in the State of Connecticut, but with an office and place of business located in the city of New York and State of New York, and that the respondent, The Brown Co. (Inc.), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located in the city of Trenton, in the State of New Jersey; that the respondent, The American Agricultural Chemical Co., is now and has been at all times hereinafter mentioned engaged in the business of manufacturing fertilizer and refining animal fats and selling its products throughout the States of the United States and in the District of Columbia, but not in any of the Territories of the United States, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged; and that the respondent, The Brown Co. (Inc.), is now and has been at all times hereinafter mentioned engaged in the business of refining animal fats and selling its products throughout the States of the United States, but not in any of the Territories of the United States nor in the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business, respondent, The American Agricultural Chemical Co., purchases large amounts of raw materials in the States of New York and Pennsylvania, for its rendering business, but no purchases of such raw materials are made in other States direct by said The American Agricultural Chemical Co., respondent; that said material so purchased direct by The American Agricultural Chemical Co., respondent, are transported from the point of purchase to its plants located in the State of New York, where they are made or manufactured into

the finished product and then sold and shipped to purchasers in various States and in the District of Columbia, but not in any of the Territories of the United States; that after such products are so manufactured they, or part thereof, are continuously moved to, from and among other States of the United States, and there has been at all times hereinafter mentioned a constant current of trade in commerce in said products between and among various States of the United States, and especially to and through the city of New York and other cities of the State of New York, and therefrom to and through other States of the United States.

PAR. 3. That in the conduct of its business The Brown Co. (Inc.), respondent, purchases large amounts of raw materials in the States of New Jersey and Pennsylvania and causes the same to be transported from the points of purchase to its factories in the city of Trenton, N. J., and in the city of Philadelphia, Pa., where they are made or manufactured into the finished product and then sold and shipped to purchasers in various States of the United States, but not in any of the Territories of the United States nor in the District of Columbia; that after such products are so manufactured they are continuously moved to, from and among the State of New Jersey and the State of Pennsylvania and various other States of the United States, but not in any of the Territories of the United States, nor in the District of Columbia, and that there is continuously and has been at all times hereinafter mentioned, a constant current of trade and commerce in said products between and among the various States of the United States, and especially to and through the city of Trenton, State of New Jersey, and city of Philadelphia, State of Pennsylvania, and therefrom to and through various other States of the United States, but not in any of the Territories of the United States, nor in the District of Columbia.

PAR. 4. That the respondent, The American Agricultural Chemical Co., and The Brown Co. (Inc.), with the purpose, intent, and effect of suppressing competition in the manufacture and sale of their products in interstate commerce for more than one year last past, while conducting their business

generally at a profit, have in certain local areas, particularly in the city of Philadelphia, State of Pennsylvania, and in Atlantic City, State of New Jersey, purchased and offered to purchase raw materials necessary in the manufacture of their rendering products at and for prices unwarranted by trade conditions and so high as to be prohibitive to small competitors in such areas; that such prohibitive prices were calculated and designed to and did tend to destroy certain small competitors in such areas, particularly in Philadelphia and Atlantic City, aforesaid, whereby competition in bidding for such raw materials was to be eliminated.

PAR. 5. That respondent, The Brown Co. (Inc.), through and by its agents, servants, and employees, has willfully caused certain of its trucks to collide with automobiles owned and operated by said competitors at times when the automobiles of said competitors were following trucks of the said respondents, The Brown Co. (Inc.), for the purpose of spying upon the business and customers of The Brown Co. (Inc.); that such collisions were calculated and designed to and did so damage the machines of the competitors as to hinder, delay, and embarrass said competitors in the conduct of their business.

PAR. 6. That the respondent, The American Agricultural Chemical Co., a corporation engaged in commerce as aforesaid, did during the year 1917 acquire the whole of the capital stock of the said The Brown Co. (Inc.), a corporation also engaged in commerce as aforesaid, and that the said respondent, The American Agricultural Chemical Co., ever since the time of its said acquisition of said stock has owned and still does own the whole of the capital stock of the said The Brown Co. (Inc.); that prior to its acquisition as aforesaid of the stock of The Brown Co. (Inc.) the respondent, The American Agricultural Chemical Co., was not engaged in the city of Trenton, State of New Jersey, nor in the city of Philadelphia, State of Pennsylvania, in the collection or purchase direct of raw materials in the cities of Trenton, N. J., or in Philadelphia, Pa.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to facts in paragraphs 4 and 5, and each

and all of them, are under the circumstances therein set forth unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent, The American Agricultural Chemical Co., having entered its appearance by Gifford, Hobbs & Beard, its attorneys, and having filed its answer and agreed statement of facts wherein it is stipulated and agreed that the Commission shall forthwith proceed upon said agreed statement of facts to make and enter its report, stating its findings as to the facts and its conclusions, and to enter its order disposing of its proceeding without the introduction of testimony in support of the same, said respondent, The American Agricultural Chemical Co. forever waiving and relinquishing any and all right to the introduction of such testimony; and The Brown Co. (Inc.), respondent (in the complaint designated as Brown Co.), having entered its appearance by Gifford, Hobbs & Beard, its attorneys, and having filed its answer and agreed statement of facts wherein it is stipulated and agreed that the Commission shall forthwith proceed upon said agreed statement of facts to make and enter its report, stating its findings as to the facts and its conclusions, and to enter its order disposing of its proceeding without the introduction of testimony in support of the same, said respondent, The Brown Co., forever waiving and relinquishing any and all right to the introduction of such testimony; and the Commission having made and filed its report stating its findings as to the facts and its conclusions, that the respondents, The American Agricultural Chemical Co., and The Brown Co. (Inc.), have violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers

and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered*, That the respondents, The American Agricultural Chemical Co., and The Brown Co. (Inc.), and their respective officers, directors, agents, servants, and employees, cease and desist from purchasing and offering to purchase raw materials in the manufacture of their rendering products at and for prices unwarranted by trade conditions and so high as to be prohibitive to small competitors, particularly in the city of Philadelphia, State of Pennsylvania, and in Atlantic City, State of New Jersey; and Now, therefore,

*It is further ordered*, That the respondent, The Brown Co. (Inc.), and its officers, directors, agents, servants, and employees, cease and desist from causing any of the trucks of said respondent to collide with automobiles owned and operated by any competitor of said respondent at times when the automobiles of such competitor may be following the trucks of the said respondent, The Brown Co. (Inc.), for the purpose of spying upon the business and customers of The Brown Co. (Inc.).

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## FEDERAL TRADE COMMISSION *v.* GEOGRAPHICAL PUBLISHING CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 174.—October 8, 1918.

### SYLLABUS.

Where a publisher of maps—

- (a) copied and appropriated the context, subject matter, statements, impressions, language, punctuation, typographical arrangement, and general appearance of the advertising matter of competitors; and
- (b) published advertising matter containing false and misleading statements calculated and designed to confuse and mislead the trade and the public and to cause the belief that the maps so offered were those of competitors:

**Held**, That such appropriation of advertising matter and such false and misleading statements, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.



## COMPLAINT

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the Geographical Publishing Co. of Chicago, hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Geographical Publishing Co. of Chicago, is a corporation organized and doing business under and by virtue of the laws of the State of Illinois, having its principal office in the city of Chicago, of said State, and is now and for more than two years last past has been engaged in the publication of maps and in the sale and distribution of the same throughout the various States and Territories of the United States and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business respondent for more than six months last past has been and now is selling, moving, and distributing its maps, so published by it, from the State of Illinois to and among the various States and Territories of the United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in such maps between and among the various States and Territories of the United States and District of Columbia.

PAR. 3. That a certain competitor of respondent in the conduct of its business and as a means of furthering the same originated and composed, and for more than six months last past has been and is now publishing and circulating certain advertising matter relating to a war map, designated and labeled by it "Liberty Map," which for more than six months last past said competitor has been and is now selling

in interstate commerce; that the respondent, in the conduct of its business for more than six months last past has published and sold and continues to publish and sell a similar war map designated and labeled "Liberty War Map," in direct competition with said competitor; that respondent as a means of furthering the sale of its maps, and instead of originating, composing, publishing, and circulating advertising matter of its own, for more than six months last past has been and now is publishing, circulating, and causing the publication and circulation of advertising matter composed by respondent by extensively copying and appropriating the context, subject matter, statements, expressions, language, punctuation, typographical arrangement, and general appearance of the advertising matter of said competitor; that many of said statements are false as applied to respondent's maps and to the steps leading to the preparation of the same; that all of the aforesaid acts of respondent have been and are well calculated to cause confusion and to mislead and deceive the public and prospective purchasers of maps into believing that respondent's maps are the same as, or identical with, those of said competitor, and thus to enable respondent to appropriate and obtain the benefit of the selling arguments and other advertising values created by expenditures and resources of said competitor and to obtain much patronage which except for respondent's said acts would go to said competitor; and that all of said acts of respondent have been and are well calculated to have other and similar effects and results.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, The Geographical Publishing Co. (erroneously named and styled "Geographical Publishing Co., of Chicago"), has been, and now is, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its

powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having appeared by John Thomas, its president, duly authorized and empowered to act in the premises, and filed its answer admitting that the matters and things alleged in said complaint are true in the manner and form as therein set forth and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and its conclusions of law, and its order disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony, the Commission now makes this report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Geographical Publishing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its home office located at the city of Chicago, in the said State of Illinois, now and for more than one year last past engaged in the business of manufacturing and selling maps generally in commerce throughout the States and Territories of the United States in direct competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 2. That within the year last past, respondent has manufactured and published a war map designated and labeled "Liberty War Map," and in the sale of the same in commerce as aforesaid has published and caused to be published and circulated throughout the various States of the United States, certain advertising matter composed by the respondent by copying and appropriating the context, subject matter, statements, impressions, language, punctuation, typographical arrangement, and general appearance of the advertising matter of a competitor or competitors of said respondent.

PAR. 3. That within the year last past, the respondent in the sale of its maps aforesaid has published and

caused to be published and circulated throughout the various States of the United States, certain advertising matter containing false and misleading statements calculated and designed to confuse and mislead and deceive the trade and general public and to cause them to believe that the maps so offered for sale by the respondent were one and the same and identical with those offered for sale by a competitor or competitors of said respondent.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 2 and 3, and each and all of them, are under the circumstances herein set forth unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondent having entered its appearance and filed its answer by John Thomas, president, duly authorized and empowered to act in the premises, admitting that the matters and things alleged and contained in the said complaint are true in the manner and form herein set forth, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and conclusions of law, and its order disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all right to introduction of such testimony, and the Commission having made and filed its report containing its findings as to the facts and its conclusion that the respondent is violating section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered,* That the respondent, The Geographical Publishing Co., of Chicago, State of Illinois, and its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly:

1. Publishing or causing to be published and circulated in commerce, advertising matter in the composition of which the context, subject matter, statements, impression, language, typographical arrangement and general appearance of the advertising matter of any competitor or competitors of the respondent has been copied and appropriated by the respondent.

2. Publishing and causing to be published and circulated in commerce any advertising matter which by the words, phrases and designs therein contained, cause or have a tendency to cause the trade or general public to believe that respondent's product is the same as that of any of its competitors.

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## FEDERAL TRADE COMMISSION *v.* THE PRINTERS' ROLLER CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS, APPROVED SEPTEMBER 26, 1914.

Docket No. 185.—October 8, 1918.

### SYLLABUS.

Where a corporation engaged in the manufacture and sale of printers' rollers and kindred products gave and offered to give to employees of customers and of competitors' customers, gratuities, entertainment, and presents, as an inducement for them to influence their employers to purchase its goods or to refrain from dealing with its competitors:

*Held,* That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Printers Roller Co., hereinafter referred to as respondent, has

been for more than a year last past, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the Printers Roller Co. is a corporation organized and existing and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business at the city of New York, in State of New York, and is now and for more than one year last past has been engaged in manufacturing and selling rollers for printing presses and similar products throughout the States and Territories of the United States, and that at all times hereinafter mentioned, the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That in the course of its business of manufacturing and selling rollers for printing presses and similar products, throughout the States and Territories of the United States, the respondent, for more than one year last past has been giving and offering to give, to employees of both its customers and prospective customers, as an inducement to influence their employers to purchase or contract to purchase from the respondent, rollers for printing presses and similar products, without other consideration therefor, gratuities such as liquor, cigars, meals, theater tickets, valuable presents, and entertainment.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, the Printers'

Roller Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in this respect and the respondent having filed its answer admitting that the matters and things alleged in the said complaint are true in the manner and form therein set forth, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to the facts, and its order disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony, the Commission makes this report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Printers' Roller Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its home office located at the city of New York in the State of New York, now and for more than one year last past engaged in the business of manufacturing and selling rollers for printing presses and kindred products generally in commerce throughout the States and Territories of the United States in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That for more than one year last past the respondent has given and offered to give employees of both its customers and prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent, rollers for printing presses and kindred products or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, gratuities consisting of liquors, cigars, meals, theater tickets, and other personal property.

**PAR. 3.** That for more than one year last past the respondent has given and offered to give employees of both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent rollers for printing presses and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, entertainment consisting of amusements and diversions of various kinds and description.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs two and three and each and all of them, are under the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent having filed its answer admitting that the matters and things alleged and contained in the said complaint are true in the manner and form therein set forth, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part thereof: Now, therefore,



*It is ordered,* That the respondent, the Printers' Roller Co., and its officers, directors, agents, servants, and employees, cease and desist from, directly or indirectly:

1. Giving or offering to give employees of its customers or prospective customers or those of its competitors' customers or prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent rollers for printing presses and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, gratuities, such as liquors, cigars, meals, theater tickets, valuable presents, and other personal property.

2. Giving and offering to give employees of its customers and prospective customers or those of its competitors' customers or prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent rollers for printing presses and kindred products, or influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, entertainment, consisting of amusements or diversions of any kind whatsoever.

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**FEDERAL TRADE COMMISSION v. D. H. DONEGAN, DOING BUSINESS UNDER THE NAME AND STYLE OF THE AMERICAN PRINTERS' ROLLER CO.**

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 186.—October 10, 1918.

**SYLLABUS.**

Where a concern engaged in the manufacture and sale of printers' rollers and kindred products gave and offered to give to employees of customers and of competitors' customers gratuities, entertainment, and presents, as an inducement for them to influence their employers to purchase its goods or to refrain from dealing with its competitors:

*Held,* That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that D. H. Donegan, doing business under the name and style of the American Printing Roller Ink Co., hereinafter referred to as respondent, has been for more than a year last past, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, D. H. Donegan, doing business under the name and style of the American Printing Roller Ink Co., having his principal office and place of business in the city of Chicago, State of Illinois, is now and for more than one year last past has been engaged in manufacturing and selling rollers for printing presses and similar products throughout the States and Territories of the United States, and that at all times hereinafter mentioned, the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That in the course of his business of manufacturing and selling rollers for printing presses and similar products throughout the States and Territories of the United States, the respondent, for more than one year last past, has been giving and offering to give to employees of both his customers and prospective customers as an inducement to influence their employers to purchase or contract to purchase from the respondent rollers for printing presses and similar products, without other consideration therefor, gratuities such as liquor, cigars, meals, theater tickets, presents, and entertainment.

PAR. 3. That in the course of his business of manufacturing and selling rollers for printing presses and similar products throughout the States and Territories of the United

States, the respondent for more than one year last past has been secretly paying and offering to pay to employees of both his customers and prospective customers, and his competitors' customers and prospective customers, without the knowledge and consent of their employers, sums of money as an inducement to influence their said employers to purchase or contract to purchase from the respondent, rollers for printing presses and similar products or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondent.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, D. H. Donegan, doing business under the name and style of the American Printers' Roller Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in this respect and the respondent having filed his answer admitting that prior to the year 1918 there existed in the printers' roller trade the practice of giving to employees of customers and prospective customers gratuities, presents, and entertainment as an inducement to influence the purchase of rollers for printing presses, in which this respondent participated, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to the facts, and its order disposing of this proceeding without the introduction of testimony in support of the same, the Commission makes this report and findings as to the facts and conclusions:

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, D. H. Donegan, doing business under the name and style of the American Printers'

Roller Co., at the city of Chicago, in the State of Illinois, is now and for more than one year last past has been engaged in the business of manufacturing and selling rollers for printing presses and similar products generally in commerce throughout the States and Territories of the United States in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That prior to January 1, 1918, the respondent has given and offered to give employees of both his customers and prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent, rollers for printing presses and similar products or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, gratuities.

PAR. 3. That prior to January 1, 1918, the respondent has given and offered to give employees of both his customers and prospective customers and his competitors' customers and prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent, rollers for printing presses and similar products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, entertainment consisting of amusements and diversions of various kinds and description.

PAR. 4. That prior to January 1, 1918, the respondent has given and offered to give employees of both his customers and prospective customers and his competitors' customers and prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent, rollers for printing presses and similar products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, presents.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to facts in paragraphs 2, 3, 4, and each and all of

them, are under the circumstances set forth, unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent having filed his answer admitting that prior to the year 1918 there existed in the printers' roller trade the practice of giving to employees of customers, and prospective customers, gratuities, presents, and entertainment as an inducement to influence the purchase of rollers for printing presses, in which this respondent participated, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered*, That the respondent, D. H. Donegan, doing business under the name and style of the American Printers' Roller Co., his agents, servants, and employees, cease and desist from directly or indirectly:

1. Giving or offering to give employees of his customers or prospective customers or those of his competitors' customers or prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent, rollers for printing presses and similar products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, gratuities.

2. Giving or offering to give employees of his customers and prospective customers or those of his competitors' cus-

tomers or prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent, rollers for printing presses and similar products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, entertainment, consisting of amusements or diversions of any kind whatsoever.

3. Giving or offering to give employees of his customers or prospective customers or those of his competitors' customers or prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent, rollers for printing presses and similar products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, presents.

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**FEDERAL TRADE COMMISSION v. ANDERSON GRATZ AND BENJAMIN GRATZ, COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF WARREN, JONES & GRATZ; P. P. WILLIAMS, W. H. FITZHUGH, AND ALEX FITZHUGH, COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME AND STLYE OF P. P. WILLIAMS & CO., AND CHARLES O. ELMER.**

**COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF ALLEGED VIOLATION OF SECTION 3 OF THE ACT OF CONGRESS APPROVED OCTOBER 15, 1914.**

**Docket No. 12.—October 12, 1918.**

**SYLLABUS.**

Where the general selling and distributing agents for a manufacturer producing 75 per cent of the cotton ties in the United States, who were also the general selling and distributing agents for a manufacturer producing 45 per cent of the jute bagging used in baling cotton—

- (a) required purchasers of cotton ties to purchase therewith a corresponding amount of cotton bagging; and,
- (b) refused to sell cotton ties unless a corresponding amount of bagging was purchased therewith:

*Held*, That such use of one product to force the purchase of other products, to the exclusion of the goods of competitors, constituted an unfair method of competition, in violation of section 5 of the act of September 26, 1914.

(NOTE.—See Appendix I, page 571, for the opinion of the Circuit Court of Appeals for the Second Circuit in this case.)

### COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it that Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alex. Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co.; and Charles O. Elmer, all of whom are hereinafter referred to as respondents, have been, and are, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief, as follows:

#### I.

PARAGRAPH 1. That the respondents, Anderson Gratz and Benjamin Gratz, are copartners, doing business under the firm name and style of Warren, Jones & Gratz, having their principal office and place of business in the city of St. Louis, and State of Missouri, and are engaged in the business of selling, in interstate commerce, either directly to the trade, or through the respondents hereinafter named, steel ties made and used for binding bales of cotton, and which steel ties are manufactured by the Carnegie Steel Co., of Pittsburgh, Pa., and also selling, in the same manner, jute bagging, used to wrap bales of cotton, and which jute bagging is manufactured by the American Manufacturing Co., of St. Louis, Mo.

PAR. 2. That the respondents, P. P. Williams, W. H. Fitzhugh, and Alex. Fitzhugh, are copartners, doing business

under the firm name and style of P. P. Williams & Co., having their principal office and place of business in the city of Vicksburg, and State of Mississippi, and the said last-named respondents and the said respondent Charles O. Elmer, who is located and doing business at the city of New Orleans, and State of Louisiana, are selling and distributing agents of the said firm of Warren, Jones & Gratz, and sell and distribute the ties and bagging, manufactured as aforesaid, in interstate commerce, principally to jobbers and dealers, who resell the same to retailers, cotton ginner and farmers.

PAR. 8. That with the purpose, intent, and effect of discouraging and stifling competition in interstate commerce in the sale of such bagging, all of the respondents do now refuse, and for more than a year last past have refused, to sell any of such ties unless the prospective purchaser thereof would also buy from them bagging to be used with the number of ties proposed to be bought; that is to say, for each six of such ties proposed to be bought from the respondents the prospective purchaser is required to buy six yards of such bagging.

## II.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alex Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co.; and Charles O. Elmer, all of whom are herein-after referred to as respondents, have been, and are, violating the provisions of section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," further complains against said respondents, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondents, Anderson Gratz and Benjamin Gratz, are copartners, doing business under the firm name and style of Warren, Jones & Gratz, having their



principal office and place of business in the city of St. Louis and State of Missouri, and are engaged in the business of selling, in interstate commerce, either directly to the trade or through the respondents hereinafter named, steel ties made and used for binding bales of cotton, and which steel ties are manufactured by the Carnegie Steel Co., of Pittsburgh, Pa., and also selling, in the same manner, jute bagging, used to wrap bales of cotton, and which jute bagging is manufactured by the American Manufacturing Co., of St. Louis, Mo.

PAR. 2. That the respondents, P. P. Williams, W. H. Fitzhugh, and Alex. Fitzhugh, are copartners, doing business under the firm name and style of P. P. Williams & Co., having their principal office and place of business in the city of Vicksburg, and State of Mississippi, and the said last-named respondents and the said respondent Charles O. Elmer, who is located and doing business at the city of New Orleans, and State of Louisiana, are selling and distributing agents of the said firm of Warren, Jones & Gratz, and sell and distribute the ties and bagging manufactured as aforesaid, in interstate commerce, principally to jobbers and dealers, who resell the same to retailers, cotton ginners, and farmers.

PAR. 3. That all of the said respondents, for more than a year last past, in the course of interstate commerce, in violation of section 3 of the Clayton Act, have sold and made contracts for sale, and are now selling and making contracts for sale, of large quantities of such ties and such jute bagging, for use, consumption and resale within the United States, and have fixed, and are now fixing the price charged therefor, or discount from, or rebate upon such price on the condition, agreement, or understanding that the purchasers thereof shall not use or deal in the goods, wares, merchandise, supplies, or other commodities of a competitor or competitors of respondents, and that the effect of such sales and contracts for sales, or such conditions, agreements, or understandings may be and is to substantially lessen competition or to tend to create a monopoly in such cotton-tie and jute-bagging industry.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co.; and C. O. Elmer, have been and now are using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect, and the respondents having entered their appearance by their attorneys at law, W. H. and Davis Biggs, T. C. Catchings, and Thos. F. Magner, and the Commission having offered testimony in support of its charges in said complaint, and the respondents having offered testimony in denial of said charges in said complaint, and attorneys for the Commission and the respondents having submitted their briefs as to the law and the facts in said proceeding, and having also made oral argument before the Commission on the law and the facts in said case, the Commission makes this report and findings as to the facts, and conclusions of law.

### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, one of the respondents, is a copartnership whose principal office and place of business is in the city of St. Louis, State of Missouri; that P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P.

Williams & Co., is a copartnership with its principal office and place of business in the city of Vicksburg, State of Mississippi; and that the other respondent, C. O. Elmer, has his principal office and place of business in the city of New Orleans, State of Louisiana; that all of said respondents are now, and were at all times hereinafter mentioned, engaged in commerce among the several States and Territories of the United States in the sale and distribution of steel ties, manufactured and used for the purpose of binding bales of cotton and jute bagging, manufactured and used for the purpose of covering and wrapping bales of cotton; and that the respondents, P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and C. O. Elmer were and are general selling and distributing agents for the said Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, in the sale and distribution of said articles of commerce; and that the said Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, were and are the general selling and distributing agents for the Carnegie Steel Co., located at Pittsburgh, Pa., in the sale and distribution of steel ties manufactured and used for the purpose aforesaid; and that the said Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, were and are the general selling and distributing agents of the American Manufacturing Co., the principal office of which is in the city of Brooklyn, State of New York, for the sale and distribution throughout the States, commonly known as cotton States, of jute bagging manufactured and used for the purpose aforesaid; and that Mente & Co. with offices in the cities of New York and New Orleans, and many other persons sell and distribute a material known as sugar bag cloth in interstate commerce throughout the cotton growing States of this country, which material is used for the purpose of wrapping bales of cotton, and that the Carolina Bagging Co., located at Henderson, N. C., manufactures, sells and distributes in interstate commerce, throughout the cotton-growing States of

this country, what is known as re woven bagging and that said material known as re woven bagging is manufactured and sold by other corporations and copartnerships in interstate commerce.

PAR. 2. That within three years last past respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co.; and C. O. Elmer, adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging. The purpose and effect of said policy was to force those dealers, jobbers, and merchants who wished to buy steel ties from the said Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, either through themselves or their general agents, P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and C. O. Elmer, to also buy at the same time from said respondent a corresponding amount of American bagging manufactured by the American Manufacturing Co., of which manufacturing company the said respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, were the sole selling and distributing agents in all the territory west of the Mississippi River where cotton is grown and where bagging and ties are sold for the purpose of covering and wrapping bales of cotton.

PAR. 3. That the said respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, were and are the sole selling and distributing agents of the Carnegie Steel Co., of Pittsburgh, Pa., in the sale and distribution of its entire output of steel ties made and sold for the purpose of binding bales of cotton; and that the Carnegie Steel Co. manufactures and sells annually about 75 per cent of all the steel ties manufactured for such purpose in the United

States; and that the Carnegie Steel Co. sufficiently dominates the cotton tie situation in the United States to enable it to fix and control the price of such ties throughout the country; and that about 45 per cent of the jute bagging required to cover the cotton crop of the Southern States is annually manufactured by the American Manufacturing Co., and about 20 per cent by the Ludlow Manufacturing Associates, of Boston, Mass., and the remaining requirement for baling the cotton crop, viz, about 35 per cent is made up by the use of second-hand bagging and a material called sugar bag cloth. This cloth, as well as the second-hand or rewoven bagging, is in considerable demand by cotton balers and is sold and distributed by dealers throughout the Southern States in active competition with the jute bagging manufactured by the American Manufacturing Co., and sold and distributed by the said respondents.

PAR. 4. That a great many merchants, jobbers, and dealers in bagging and ties throughout the cotton-growing States were many times unable to procure ties from any other firms except Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, or their said agents, P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and C. O. Elmer, and that the said respondents sold and distributed such a large proportion of the entire amount of such ties manufactured and sold in the entire cotton-growing section of the country, that they, the said respondents, had what amounted to a monopoly of the cotton-tie business of the country, controlling and distributing such a large proportion of the entire output of cotton ties that cotton growers found it impossible to bind the cotton grown and produced in the Southern States without applying to and purchasing from the said respondents and their agents almost the entire output of such ties manufactured by the Carnegie Steel Co. The dominating and controlling position occupied by said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy from them bagging manufactured by the American Manufacturing Co. and, in many instances, said respondents refused to sell ties

unless the purchaser would also buy from them a corresponding amount of bagging and such purchasers were often times compelled to buy bagging manufactured by the American Manufacturing Co., from said respondents, in order to procure a sufficient supply of steel ties used for the purpose aforesaid.

#### CONCLUSION.

That the methods of competition set forth in the foregoing findings as to the facts, in paragraphs 1, 2, 3, and 4, and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, against other manufacturers, dealers, and distributors of jute bagging, and against other dealers and distributors in the material known as sugar-bag cloth, and against manufacturers, dealers, and distributors of the bagging known as rewoven bagging and secondhand bagging, in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that there is not sufficient proof submitted in the hearings to sustain the paragraph in the complaint charging a violation of section 3 of an act of Congress known as the Clayton act.

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and C. O. Elmer, having entered their appearance by their attorneys at law, and the Commission having offered testimony in support of its charges in the said complaint, and the respondents having offered testimony in denial of said charges of the said complaint, and the attorneys for the Commission and the respondents hav-

ing submitted their briefs as to the law and the facts in said proceedings, and the same having been argued before an examiner of the Commission and said examiner having made and presented to the Commission his proposed findings as to the facts, and the respondents having entered exceptions to said examiner's proposed findings as to the facts, and said exceptions having been duly argued before the Commission by counsel for the Commission and the respondent, and the Commission on the date hereof having made and filed a report containing its findings as to the facts and conclusions that the respondents have violated section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Therefore,

*It is ordered,* That the respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and C. O. Elmer, their officers and agents, cease and desist from requiring purchasers of cotton ties to also buy or agree to buy a proportionate amount of American Manufacturing Co.'s bagging, and further that the respondents cease and desist from refusing to sell cotton ties unless the purchasers buy or agree to buy from them corresponding amounts of American Manufacturing Co.'s bagging, or any amount of cotton bagging of any kind.

## FEDERAL TRADE COMMISSION

2.

## WAYNE OIL TANK &amp; PUMP CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF THE ALLEGED VIOLATION OF SECTION 2 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket No. 129.—October 18, 1918.

## SYLLABUS.

Where a corporation engaged in the manufacture and sale of outfits and devices for the storage, handling, and automatic measuring of oils, gasoline and other volatile liquids—

## I.

- (a) Published and circulated, for the purpose of hindering, embarrassing, and restraining a competitor in the conduct of its business, copies of an item from a newspaper setting forth that such competitor had been found guilty of engaging in a conspiracy in violation of the Sherman law, and that an injunctive decree had been entered against it in the United States district court;
- (b) Induced the cancellation or rescission of orders and contracts and of intended orders and contracts by customers of competitors;
- (c) Enticed away salesmen and sales agents of a competitor, for the purpose of injuring said competitor in the conduct of its business, disorganizing its sales force, and eliminating it as a competitor;
- (d) Represented to its own customers and to customers of competitors, falsely and erroneously, with full knowledge of such falsehood and error, and for the purpose of misleading the public and injuring competitors—
  - (1) That certain outfits and devices manufactured and sold by a competitor were manufactured and sold by it; and, that certain outfits and devices manufactured and sold by it were manufactured and sold by a competitor;
  - (2) That its sales agents and other employees were the sales agents and employees of a competitor; and, that the sales agents and other employees of a competitor were its sales agents and employees; and
  - (3) That it and a competitor were one and the same concern:

**Held:** That such acts constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.



## II.

(e) Discriminated in price between different purchasers of its commodities in such a manner that the effect of such discrimination might be to substantially lessen competition and tend to create a monopoly:

*Held:* That such discrimination constituted a violation of section 2 of the act of October 15, 1914.

## COMPLAINT.

I. The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the Wayne Oil Tank & Pump Co., hereinafter referred to as respondent, has been and is, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Wayne Oil Tank & Pump Co., is now, and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, having its principal factory, office and place of business located at the city of Fort Wayne, State of Indiana, now and for more than two years last past, engaged in the business of manufacturing and selling automatic measuring oil pumps, tanks, and other outfits and patented devices for the storage, handling, and automatic measuring of oils, gasoline, and other volatile liquids, throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries, and that at all times hereinafter mentioned this respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations similarly engaged; that William P. Griffin, Henry C. Berghoff, Ralph F. Disarens, and Clayton O. Griffin, all of the city of Fort Wayne, State of Indiana, are the president, vice president, treasurer and general mana-

ger, and secretary, respectively, of the respondent, Wayne Oil Tank & Pump Co., and that J. Gerard Rodman of the city of Memphis, State of Tennessee, Edward P. Hayes, of the city of Wichita, State of Kansas, and R. Tirbue Lawrence, of the city of Minneapolis, State of Minnesota, are selling agents of the said respondent company.

PAR. 2. That the respondent, Wayne Oil Tank & Pump Co., in the conduct of its business, sells large numbers of its outfits or devices throughout the various States and Territories of the United States, the District of Columbia, and foreign countries; that this respondent manufactures such devices or outfits so sold by it in its factory located at Fort Wayne, State of Indiana, and purchases and enters into contracts of purchase for the necessary component materials needed therefor in different States and Territories of the United States, causing the same to be transported to its factory, where they are made into the finished product and sold and shipped to the purchasers thereof as aforesaid; that after such outfits or devices are so manufactured they are continuously moved to, from, and among other States and Territories of the United States and the District of Columbia, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade in commerce in said devices between and among the various States and Territories of the United States and the District of Columbia, and especially from other States and Territories of the United States and the District of Columbia to and through the city of Fort Wayne, State of Indiana, and therefrom to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That the respondent, for more than two years last past, with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of pumps, tanks, and outfits for the storage and handling of inflammable liquids in interstate commerce, has published and circulated in various States of the United States and Canada a printed clipping or circular purporting to be a copy of a news item appearing in the Indianapolis News on the 10th day of June, A. D. 1915. wherein it is reported and set forth that a certain competitor of the respondent had

been found guilty of engaging in a combination in violation of the Sherman Anti-Trust Act, and that an injunctive decree had been entered against such competitor by the judge of the United States District Court for the District of Indiana; that the publishing and circulating of such news item was calculated, designed to, and did embarrass, harrass, and restrain respondent's competitor in the conduct of its business.

PAR. 4. That the respondent, for more than two years last past, with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of pumps, tanks, and outfits for the storage and handling of inflammable liquids in interstate commerce, has, by divers means and methods, induced and procured, and attempted to induce and procure, a large number of its customers and prospective customers, and the customers and prospective customers of its competitors, to cancel and rescind orders and contracts for the purchase of pumps, tanks, and other outfits placed and made with competitors of the respondent.

PAR. 5. That the respondent, for more than two years last past, with the purpose, intent, and effect of annoying, embarrassing, and restraining its competitors in the conduct of their business, has systematically and on a large scale induced and enticed and attempted to induce and entice salesmen and employees of its competitors to leave their employment by offering and giving such salesmen and employees employment with the respondent.

PAR. 6. That the respondent, for more than two years last past, by and through its agents, servants, and employees has represented, stated, and held out to customers and prospective customers that—

(a) Certain of the outfits and devices manufactured and sold by its competitors were manufactured and sold by the respondent, Wayne Oil Tank & Pump Co.;

(b) Certain of the outfits and devices manufactured and sold by the respondent, Wayne Oil Tank & Pump Co., were manufactured and sold by competitors of the respondent;

(c) Certain of the agents and salesmen employed by its competitors were the agents and salesmen of the respondent, Wayne Oil Tank & Pump Co.;

(d) A certain competitor company was one and the same company as the respondent, Wayne Oil Tank & Pump Co.;

(e) The products of its competitors were inferior, cheap in quality, no good, and would not properly operate;

(f) Certain of the products manufactured and sold by its competitors had been condemned;

(g) The offices and plant of a certain competitor had been closed by an order of court; and that such statements and representations were false, misleading, and defamatory, and calculated and designed to deceive the trade and general public.

PAR. 7. That the respondent, for more than two years last past, with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of pumps, tanks, and outfits for the storage and handling of inflammable liquids in interstate commerce, by and through its representatives, agents, servants, and employees has caused certain of the outfits, equipment, and devices manufactured and sold by its competitors, to be mutilated, damaged, and broken.

II. The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Wayne Oil Tank & Pump Co., hereinafter referred to as respondent, has violated, and is violating, the provisions of section 2 of the act of Congress approved October 15, 1914, entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," hereinafter referred to as the Clayton Act, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Wayne Oil Tank & Pump Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, having its principal factory, office, and place of business located at the city of Fort Wayne, State of Indiana, now and at all times hereinafter mentioned, engaged in the business of manufacturing and selling automatic measuring oil pumps, tanks and other outfits, and patented devices for the storage, handling, and automatic measuring of oils, gasoline, and other volatile liquids, generally in commerce,

among the several States and Territories of the United States and foreign countries, and that William P. Griffin, Henry C. Berghoff, Ralph E. Diserens, Clayton O. Griffin, J. Gerard Rodman, Edward P. Hayes, and R. Tirbue Lawrence are officers and agents of the said company, as more fully alleged and set forth in paragraphs 1 and 2 of Section I of this complaint.

PAR. 2. That the respondent, for several years last past, in the course of interstate commerce in violation of section 2 of the Clayton Act, has discriminated in price and is now discriminating in price between different purchasers of pumps, tanks, and outfits for the storage and handling of inflammable liquids, which products are sold for use, consumption or resale within the United States or the Territories thereof, and the District of Columbia, and the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, Wayne Oil Tank & Pump Co., had been and then was using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and has been and then was violating the provisions of section 2 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," and that a proceeding by it in those respects would be to the interest of the public, and fully stating its charges thereupon; and the respondent having entered its appearance by Hosea, Knight & Phares, its attorneys, and having filed its answer admitting certain of the matters alleged and set forth in the complaint, and denying others therein contained, and having signed and filed an agreed statement of facts, wherein it is stipulated and agreed that

the Commission shall forthwith proceed upon such agreed statement of facts to make and enter its report, stating its findings as to the facts and conclusions, and its order disposing of this proceeding, without the introduction of testimony in support of the same, and the respondent having waived any and all rights to the introduction of such testimony, the Commission now makes its report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Wayne Oil Tank & Pump Co., is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, having its principal factory, office, and place of business located at the city of Fort Wayne, State of Indiana, now and for more than two years last past engaged in the business of manufacturing and selling automatic measuring oil pumps, tanks, and other outfits and patented devices for the storage, handling, and automatic measuring of oils, gasoline, and other volatile liquids throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries, and that at all times hereinafter mentioned respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Wayne Oil Tank & Pump Co., in the conduct of its business sells large numbers of its outfits or devices throughout the various States and Territories of the United States, the District of Columbia, and foreign countries; that respondent manufactures such devices or outfits so sold by it in its factory located in the city of Fort Wayne, State of Indiana, and purchases and enters into contracts to purchase the necessary materials needed therefor in the different States and Territories of the United States, causing the same to be transported to its factories where they are made into the finished products and sold and shipped to the purchasers thereof as aforesaid; that after such outfits or devices are so manufactured

they are continuously shipped to, from, and among other States and Territories of the United States, and the District of Columbia, and there is continuously and has been at all times herein mentioned, a constant current of trade in commerce of said devices or outfits between and among the various States and Territories of the United States and the District of Columbia, and especially from other States and Territories of the United States and the District of Columbia to and through the city of Fort Wayne, State of Indiana, and therefrom to and through other States and Territories of the United States, and the District of Columbia.

PAR. 3. That the respondent, Wayne Oil Tank & Pump Co., for the purpose of embarrassing, harassing, and restraining one of the respondent's competitors in the conduct of its business has for more than two years last past published and circulated in the various States of the United States, the Territories thereof and in Canada, a printed clipping or circular which was a copy of a news item which appeared in the Indianapolis News on the 10th day of June, A. D. 1915, wherein it was reported and set forth by the publishers of that paper that the above-referred-to-competitor of respondent had been found guilty of engaging in a combination in violation of the Sherman Anti-Trust Act and that an injunctive decree has been entered against such competitor by the judge of the United States District Court for the District of Indiana.

PAR. 4. That the respondent, Wayne Oil Tank & Pump Co., through the acts of numerous of its sales agents, who were acting within the scope of their employment, for more than two years last past, with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of automatic measuring pumps, tanks, and other outfits and devices for the storage, handling, and automatic measuring of oils, gasoline, and other volatile liquids, has by divers means and methods induced and procured and has attempted to induce and procure a large number of customers and prospective customers of respondent and a large number of customers and prospective customers or competitors of respondent, to cancel and rescind orders and con-

tracts for the purchase in interstate commerce of pumps, tanks, and other outfits, and patented devices for the storage and automatic measuring of oils, gasoline, and other volatile liquids placed or intended to be placed with competitors of respondent.

PAR. 5. That the respondent, Wayne Oil Tank & Pump Co., through numerous of its district managers, while engaged within the scope of their employment, has within two years last past employed and attempted to employ salesmen and sales agents of a competitor of respondent, well knowing that such salesmen and sales agents were then in the employ of such competitor; that such employing and attempts to employ made by respondent through such district managers, were not preceded by applications from such salesmen and sales agents for employment with respondent; that such employing and attempts to employ such salesmen and sales agents as aforesaid, were done for the purpose of injuring said competitor of respondent in the conduct of its business, for the purpose of disorganizing its sales force, and for the purpose of eliminating it as a competitor of respondent.

PAR. 6. That respondent, Wayne Oil Tank & Pump Co., through certain of its sales agents, has for more than two years last past, for the purpose of misleading the public and for the purpose of stifling and suppressing the business of a certain competitor of respondent, on numerous occasions, falsely and erroneously stated to certain customers and prospective customers of respondent and to certain customers and prospective customers of a competitor of respondent that certain of the outfits and devices manufactured and sold by such competitor of respondent were manufactured and sold by respondent; that certain of the outfits and devices manufactured and sold by respondent were manufactured and sold by such competitor of respondent; that the sales agents of the respondent were the sales agents of such competitor of respondent; and that such competitor of respondent was one and the same company as respondent; and that all such statements and representations were known by respondent to be false and misleading and were calculated and designed to deceive the trade and general public.



PAR. 7. That the respondent, Wayne Oil Tank & Pump Co., for several years last past in the course of interstate commerce has discriminated in price and is now discriminating in price between different purchasers of pumps, tanks, and outfits for the storage, handling, and automatic measuring of oils, gasoline, and other volatile liquids, which pumps, tanks, and outfits were sold by respondent for use, consumption or resale within the United States, the Territories thereof, and the District of Columbia, and that the effect of such discrimination may be to substantially lessen competition and tend to create a monopoly.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts, in paragraphs 3, 4, 5, and 6, and each and all of them, are, under the circumstances set forth in the above findings as to the facts, unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes;" and that the acts of the respondent as set forth in paragraph 7 in the above findings as to the facts, are, under the circumstances therein related, in violation of section 2 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, Wayne Oil Tank & Pump Co., had been and then was using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and had been and then was violating section 2 of the act of Congress, approved October 15, 1914,

entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and that a proceeding by it in those respects would be to the interest of the public, and fully stating its charges thereon, and the respondent having entered its appearance by Hosea, Knight & Phares, its attorneys, and having filed its answer admitting certain of the matters alleged and set forth in the complaint and denying others therein contained, and having signed and filed an agreed statement of facts wherein it is stipulated and agreed that the Commission shall forthwith proceed on such agreed statement of facts to make and enter its report stating its findings as to the facts and conclusions, and its order to dispose of this proceeding, without the introduction of testimony in support of the same, and the respondent having waived any and all rights to the introduction of such testimony, and the Commission having made its report and findings as to the facts, and conclusions, upon the statement of facts as agreed upon, and having concluded upon such findings as to the facts that the respondent has been guilty of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and has violated section 2 of an act of Congress, approved October 15, 1914, entitled, "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered*, That the respondents, Wayne Oil Tank & Pump Co., of Fort Wayne, State of Indiana, and its officers, directors, agents, servants, and employees, cease and desist from—

1. Embarrassing, harassing, or restraining, or attempting to embarrass, harass, or restrain, any of its competitors in the conduct of its business by publishing or circulating in any of the various States of the United States, or the Territories thereof, or the District of Columbia, a printed clipping or circular which is a copy of a news item which appeared in the Indianapolis News on the 10th day of June,

A. D. 1915, wherein it is reported and set forth that a certain competitor of respondent had been found guilty of engaging in a combination in violation of the Sherman Anti-Trust Act, and that an injunctive decree had been entered against such competitor by a judge of United States District Court of the District of Indiana; or by publishing or circulating in a similar manner, any printed clipping or circular similar in form, purport, or effect, regarding any competitor of the respondent.

2. Publishing or circulating in any of the various States of the United States, or the Territories thereof, or the District of Columbia, a printed clipping or circular which is a copy of a news item which appeared in the Indianapolis News on the 10th day of June, A. D. 1915, wherein it is reported and set forth that a certain competitor of respondent had been found guilty of engaging in a combination in violation of the Sherman Anti-Trust Act, and that an injunctive decree had been entered against such competitor by a judge of the United States District Court of the District of Indiana; or publishing or circulating in a similar manner any printed clipping or circular similar in form, purport or effect, regarding any competitor of the respondent.

3. Stifling or suppressing competition, or attempting to stifle or suppress competition in interstate commerce in the manufacture or sale of automatic measuring pumps, tanks, or other outfits or devices for the storage, handling or automatic measuring of oils, gasoline, or other volatile liquids, or any article manufactured by respondent's competitors, by inducing or procuring, or attempting to induce and procure, by any means or methods, the cancellation or rescission of any order or contract of any customer or prospective customer of any of respondent's competitors for the purchase of such pumps, tanks, or other outfits or patented devices for the storage or automatic measuring of oils, gasoline or other volatile liquids, or any other products manufactured by any of its competitors in competition with respondent.

4. Inducing or procuring, or attempting to induce or procure, by any means or methods, the cancellation or rescission of any order or contract of any customer or prospective customer of any of respondent's competitors for the

purchase in interstate commerce of such pumps, tanks, or other outfits or patented devices for the storage or automatic measuring of oils, gasoline, or other volatile liquids, or any other products manufactured by any of its competitors in competition with respondent.

5. Injuring, or attempting to injure any competitor of respondent in the conduct of its business; disorganizing, or attempting to disorganize the sales force of any such competitor, or eliminating any such competitor, or attempting to eliminate it as a competitor, by, in either case, employing or attempting to employ while engaged in interstate commerce any sales agent or agents or other employees of any such competitors.

6. Defrauding or misleading, or attempting to defraud or mislead, the public, or stifling or suppressing, or attempting to stifle or suppress, the business of any competitor in the course of its trade in interstate commerce by falsely or erroneously stating to any customer or prospective customer of respondent, or any customer or prospective customer of any competitor of respondent, that any of the outfits or devices manufactured or sold by any such competitor of respondent is manufactured or sold by respondent, or, that any outfits or devices manufactured or sold by respondent is manufactured or sold by any such competitor of respondent; or, that any sales agent, or other employee, of the respondent is the sales agent or employee of any competitor of respondent, or, that any sales agent, or other employee, of any competitor of respondent is the sales agent or employee of respondent; or, that any of the competitors of respondent is one and the same company as respondent; or, by doing any other act of similar purport, character, form, or effect.

7. Falsely and erroneously, with knowledge of the falsity and error thereof, stating or representing to any customer or prospective customer of respondent, or any customer or prospective customer of any competitor of respondent, in the course of its trade in interstate commerce, that any of the outfits or devices manufactured or sold by any such competitor of respondent is manufactured or sold by respondent, or, that any of the outfits or devices manufactured or sold by

respondent is manufactured or sold by any such competitor of respondent; or, that any sales agent, or other employee, of the respondent is the sales agent or employee of any such competitor of respondent, or, that any sales agent, or other employee, of any competitor of respondent is the sales agent or employee of respondent; or, that any one of the competitors of respondent is one and the same company as respondent; or, falsely or erroneously, with knowledge of the falsity or error thereof; stating or representing to any customer or prospective customer of respondent or customer or prospective customer or a competitor in the course of its trade in interstate commerce, any other state of affairs with respect to respondent and any of its competitors, of similar purport, character, form, or effect.

8. Discriminating in price in the sale of interstate commerce of pumps, tanks, or outfits for the storage, handling, or automatic measuring of oils, gasoline, or other volatile liquids, or any other goods manufactured or sold by respondent, between different purchasers of such pumps, tanks, or outfits for the storage, handling, or automatic measuring of oils, gasoline, or other volatile liquids, or other goods manufactured or sold by respondent, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly, or where said discrimination is not based on differences in grade, quality or quantity of the commodity sold, or does not merely make due allowance for difference in the cost of selling or transporting the same, or is not made in good faith to meet competition in the same or different communities.

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## FEDERAL TRADE COMMISSION *v.* MILWAUKEE TANK WORKS.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS, APPROVED SEPTEMBER 26, 1914

Docket No. 137.—October 30, 1918.

### SYLLABUS.

Where a corporation engaged in the manufacture and sale of outfits and devices for the storage, handling, and automatic measuring of oil, gasoline, and other volatile liquids, for the purpose of embar-

rassing, harrassing, and restraining competitors, induced and procured, and attempted to induce and procure, a large number of its customers and the customers of competitors to cancel and rescind orders and contracts for the purchase of such pumps and outfits from competitors:

*Held*, That such inducing of breach of contract, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the Milwaukee Tank Co., hereinafter referred to as respondent, has been and is, using unfair methods of competition in interstate commerce in violation of the provision of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That now and at all times hereinafter mentioned the respondent, Milwaukee Tank Co., is and was a corporation, organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, having its principal factory, office and place of business located at Milwaukee, State of Wisconsin, and that said corporation is now and for more than two years last past been engaged in the business of manufacturing and selling automatic measuring oil pumps, tanks and other outfits and patented devices for the storage, handling, and automatic measuring of oil, gasoline, and other volatile liquids throughout the States and Territories of the United States and the District of Columbia and foreign countries and at all times hereinafter mentioned this respondent has carried on and conducted such business in direct competition with other persons, firms, co-partnerships and corporations similarly engaged.

PAR. 2. That the respondent manufactures such devices or outfits in its factory located in the United States and purchases and enters into contracts of purchase for the necessary component materials needed therefor in different States

and Territories of the United States and causes the same to be transported to its factory where they are made into the finished product and sold and shipped to the purchasers thereof as aforesaid; that after such devices or outfits are so manufactured they are continuously moved to, from and among other States and Territories of the United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in said devices between and among the various States and Territories of the United States and the District of Columbia.

PAR. 3. That the respondent for more than two years last past with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of pumps, tanks, and outfits for the storage and handling of inflammable liquids in interstate commerce, has by divers means and methods induced and procured and attempted to induce and procure a large number of its customers and prospective customers and the customers and prospective customers of its competitors to cancel and rescind orders and contracts for the purchase of pumps, tanks, and other outfits placed and made with competitors of the respondent.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, Milwaukee Tank Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having appeared and filed its answer denying that the matters and things alleged in the said complaint are true in the manner and form therein set forth, and thereafter having entered into and executed an agreed statement of facts heretofore filed in this cause where-

in it is stipulated and agreed that the Commission shall take such agreed statement of facts to be the facts in this case and upon the same proceed forthwith to make and enter its report, stating its findings as to the facts and its conclusions, and its order without the introduction of testimony in support of the same and waiving any and all right to the introduction of such testimony.

Now, therefore, the Commission makes this its report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

1. That the Milwaukee Tank Works is the respondent corporation hereinafter referred to as the Milwaukee Tank Co., and that the said Milwaukee Tank Co. and the Milwaukee Tank Works have been, and are at all times hereinafter mentioned, one and the same identical corporation.

2. That the respondent Milwaukee Tank Works is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal factory, offices, and place of business located at the city of Milwaukee in said State, now and for more than two years prior to the filing of the complaint herein engaged in the business of manufacturing and selling automatic measuring oil pumps, tanks, and other outfits and devices for the storage, handling, and automatic measuring of oil, gasoline and other volatile liquids in interstate commerce in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

3. That numerous sales agents and representatives of respondent, Milwaukee Tank Works, while acting within the scope of their employment for the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of pumps, tanks, and outfits for the storage and handling of inflammable liquids in interstate commerce for the purpose of embarrassing, harrassing, and restraining competitors of respondent, and have by divers means and methods induced and procured and attempted to induce and procure a large number of its customers and prospective customers and the customers and prospective customers of its



1. GENERAL PRINCIPLES

2. THEORY OF THE PROBLEM

3. CONCLUSIONS

4. REFERENCES

5. APPENDICES

6. NOTES

tors to cancel and rescind any and all orders or contracts for the purchase of pumps, tanks, and other outfits placed and made with the competitors of the said Milwaukee Tank Works.

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FEDERAL TRADE COMMISSION *v.* BLAKELY  
PRINTING CO. ET AL.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER  
26, 1914.

Docket No. 175.—October 30, 1918.

SYLLABUS.

Where a number of concerns, engaged in printing railway tariffs, schedules, and other printed matter—

- (a) Entered into and carried out a combination, conspiracy, understanding, or "pool" to keep and maintain fixed prices for such printing;
- (b) Entered into a combination, conspiracy, understanding, or "pool" for the purpose of allocating to each member certain contracts for printing, and so manipulated the bidding that the respective members secured the business allocated to them; and
- (c) Gave and offered to give, to employees of customers and prospective customers, gratuities, as an inducement to influence their employers to deal with the donors or to refrain from dealing with the donors' competitors:

*Held*, That such combination and the giving of such gratuities, for the purposes set forth, constituted unfair methods of competition, in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Blakely Printing Co., Chicago Railway Printing Co., James H. Walden, Walden Typesetting Co., James Clark, James Clark Printing House, Excelsior Printing Co., Walter E. Faithorn, Faithorn Co., Gunthorp-Warren Printing Co., W. J. Hartman Co., Hillison & Etten Co., F. J. Riley Printing Co., The Henry O. Shepard Co., Stromberg, Allen & Co., and Edward Keogh Printing Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, en-

titled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondents, the Blakely Printing Co., Chicago Railway Printing Co., Excelsior Printing Co., Gunthorp-Warren Printing Co., W. J. Hartman Co., Hillison & Etten Co., F. J. Riley Printing Co., The Henry O. Shepard Co., Stromberg, Allen & Co., and Edward Keogh Printing Co., are corporations organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having their offices and principal places of business in the city of Chicago, in said State; that the respondent, James H. Walden, is doing business as the Walden Typesetting Co. in the city of Chicago, State of Illinois; that James Clark is doing business as the James Clark Printing House in the city of Chicago, State of Illinois; that Walter E. Faithorn is doing business as Faithorn Co. in the city of Chicago, State of Illinois; that all of the said respondents are now and for more than one year last past have been engaged in the business of printing and selling railway tariffs, schedules, and other printed matter throughout the States and Territories of the United States, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondents, in the course of their business of printing and selling railway tariffs, schedules, and other printed matter in interstate commerce, are now and for more than one year last past have been wrongfully and unlawfully engaged in a combination or conspiracy among themselves, entered into, carried out, and continued with the intent, purpose, and effect of discouraging, stifling, and suppressing competition in the business of printing and selling railway tariffs, schedules, and other printed matter throughout the States and Territories of the United States, by entering into an agreement, understanding, or "pool" among themselves to maintain a fixed price on printed railway tariffs, schedules, and other printed matter.

PAR. 3. That the respondents, in the course of their business of printing and selling railway tariffs, schedules, and other printed matter in interstate commerce, are now and for more than one year last past have been wrongfully and unlawfully engaged in the combination or conspiracy among themselves, entered into, carried out, and continued with the intent, purpose, and effect of discouraging, stifling, and suppressing competition in the business of printing and selling railway tariffs, schedules, and other printed matter throughout the States and Territories of the United States, by entering into an agreement, understanding, or "pool" among themselves as to which shall receive particular printing contracts submitted to them or brought to their attention for the purpose of their bidding on the same, formulating their respective bids so that the selected member of the "pool" will receive the business.

PAR. 4. That the respondents, in the course of their business of printing and selling railway tariffs, schedules, and other printed matter in interstate commerce, for more than one year last past have been giving and offering to give, to employees of both their customers and prospective customers, as an inducement to influence their employers to purchase or contract to purchase from the respondents, printed railway tariffs, schedules, and other printed matter, without other consideration therefor, gratuities such as cigars, liquors, meals, valuable presents, and entertainment.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and filed its complaint herein, wherein it is alleged that it has reason to believe that the above-named respondents, Blakely Printing Co., Chicago Railway Printing Co., James Clark Printing House, Excelsior Printing Co., Walter E. Faithorn, Gunthorp-Warren Printing Co., W. J. Hartman Co., Hillison & Etten Co., F. J. Riley Printing Co., The Henry O. Shepard Co., Edward Keogh Printing Co., have been and are now using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act

of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in this respect, and the respondent, Excelsior Printing Co., having entered its appearance by Charles R. Whitman, its attorney duly authorized to act in the premises, and having filed its answer admitting that the matters and things alleged in said complaint are true in the manner and form therein set forth, and the respondent, Blakely Printing Co., Chicago Railway Printing Co., James Clark Printing House, Walter E. Faithorn, Gunthorp-Warren Printing Co., W. J. Hartman Co., Hillison & Etten Co., F. J. Riley Printing Co., The Henry O. Shepard Co., and Edward Keogh Printing Co. having entered their appearances by Arthur B. Hayes, Esq., their attorney duly authorized to act in the premises, and having filed their answers admitting that the matters and things alleged in paragraphs 1 and 4 of said complaint are true in the manner and form therein set forth and admitting that the matters and things alleged in paragraphs 2 and 3 of said complaint were true in the manner and form alleged for a period of time prior to and including the year 1914 and a portion of the year 1915, but not true at the time of the filing of the complaint herein and for a long period prior thereto, and all of said respondents in their answers having agreed and consented that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and its conclusions and its order disposing of this proceeding without the introduction of the testimony in support of the same and waiving any and all right to the introduction of such testimony, the Commission makes this its report and findings as to the facts and conclusions:

#### FINDINGS AS TO THE FACTS.

1. That the respondents, Blakely Printing Co., Chicago Railway Printing Co., Excelsior Printing Co., Gunthorp-Warren Printing Co., W. J. Hartman Co., Hillison & Etten Co., F. J. Riley Printing Co., The Henry O. Shepard Co., and Edward Keogh Printing Co., are corporations organ-

ized, existing, and doing business under and by virtue of the State of Illinois, having their principal offices and places of business located in the city of Chicago, in said State, and that Walter E. Faithorn is a resident of the State of Illinois, having his principal office and place of business located in the city of Chicago, in said State, doing business under the trade name and style of Faithorn Co., that all of said respondents are now and for more than one year last past have been engaged in the business of printing and selling railway tariffs, schedules, and other printed matters in interstate commerce throughout the States and Territories of the United States in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

2. That in the course of their business of printing and selling railway tariffs, schedules, and other printed matter in commerce as aforesaid the respondents, Blakely Printing Co., Chicago Railway Printing Co., Gunthorp-Warren Printing Co., W. J. Hartman Co., Hillison & Etten Co., F. J. Riley Printing Co., The Henry O. Shepard Co., and Edward Keogh Printing Co., during the year 1914 and a portion of the year 1915, and the respondent, Excelsior Printing Co., for more than one year prior to the 18th day of July, 1918, entered into, engaged in, carried out, and conducted a combination, conspiracy, understanding, or "pool" among themselves to keep and maintain a fixed price on printed railway tariffs, schedules, and other printed matter.

3. That in the course of their business of printing and selling railway tariffs, schedules, and other printed matter in commerce as aforesaid the respondents, Blakely Printing Co., Chicago Railway Printing Co., Gunthorp-Warren Printing Co., W. J. Hartman Co., Hillison & Etten Co., F. J. Riley Printing Co., The Henry O. Shepard Co., and Edward Keogh Printing Co., during the year 1914 and a portion of the year 1915, and the respondent, Excelsior Printing Co., for more than one year prior to the 18th day of July, 1918, entered into, engaged in, carried out, and conducted a combination, conspiracy, understanding, or "pool" among themselves as to which of said respondents should receive particular printing contracts submitted to them or brought to their attention for the purpose of their bidding on

the same and for formulating their respective bids so that the selected member of said "pool" would receive the business.

4. That for more than one year prior to the 18th day of July, 1918, the respondents gave and offered to give employees of both its customers and prospective customers as an inducement to influence their employers to purchase or contract to purchase from the respondents printed railway tariffs, schedules, and other printed matter, or to influence such employers to refrain from dealing or contracting to deal with competitors of respondent, without other consideration therefor, gratuities consisting of liquors, meals, valuable presents, and entertainments.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 2, 3, 4, and each and all of them are under the circumstances therein set forth unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, the respondent Excelsior Printing Co., having entered its appearance by Charles R. Whitman, its attorney, duly authorized to act in its premises, and having filed its answer admitting that the matters and things alleged in the said complaint are true in the manner and form therein set forth, and the respondent Blakely Printing Co., Chicago Railway Printing Co., James Clark Printing House, Excelsior Printing Co., Walter E. Faithorn, Gunthorp-Warren Printing Co., W. J. Hartman Co., Hillison & Etten Co., F. J. Riley Printing Co., The Henry O. Shepard Co., and Edward Keogh Printing Co., having entered their appearance by Arthur B. Hayes, Esq., their attorney, duly authorized to act in the premises, and having filed their

answers admitting that the matters and things alleged in paragraphs 1 and 4 of said complaint are true in the manner and form therein set forth and admitting that the matters and things alleged in paragraphs 2 and 3 of said complaint were true in the manner and form alleged for a period of time prior to and including the year 1914 and a portion of the year 1915, but not true at the time of the filing of the complaint herein and for a long period prior thereto, and all of said respondents in their answers having agreed and consented that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and its conclusions and its order disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony, and the Commission having made and filed its report containing its findings as to the facts and its conclusions, that these respondents have violated section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered,* That the respondents, Blakely Printing Co., Chicago Railway Printing Co., James Clark Printing House, Excelsior Printing Co., Walter E. Faithorn, Gunthorp-Warren Printing Co., W. J. Hartman Co., Hillison & Etten Co., F. J. Riley Printing Co., The Henry O. Shepard Co., and Edward Keogh Printing Co., and their officers, directors, agents, representatives, servants, and employees cease and desist from directly or indirectly:

1. Entering into, engaging in, carrying out, or conducting any combination, conspiracy, understanding, or "pool" whatsoever to keep and maintain a fixed price, or prices, at and for which railway tariffs, schedules, or any other similar matter whatsoever shall be printed.

2. Entering into, engaging in, carrying out, or conducting any combination, conspiracy, understanding, or "pool" whatsoever as to who shall receive particular printing contracts submitted or brought to their attention for the purposes of their bidding on the same.



3. Entering into, engaging in, carrying out, or conducting any combination, conspiracy, understanding, or "pool" whatsoever for making, formulating, arranging, or submitting bids for any printing contract in such form, shape, or manner that a selected member of said "pool" or combination shall receive the contract.

4. Giving or offering to give employees of their customers and prospective customers or those of its competitors' customers, or prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondents' printed railway tariffs, schedules, and other printed matter or to influence such employers to refrain from dealing or contracting to deal with competitors of respondents without other consideration therefor, gratuities consisting of liquor, meals, valuable presents, and entertainments.

#### ORDERS OF DISMISSAL.

It appearing to the Commission that the respondent named in the complaint as Faithorn Co. is one and the same as the respondent Walter Faithorn also named in the complaint, and that the said Walter Faithorn is doing business under the firm name and style of Faithorn Co.; and it appearing to the Commission that the respondent James H. Walden is doing business under the trade name and style of Chicago Railway Printing Co., and as such is not engaged in the business of printing or selling railroad tariffs, as charged in the complaint; and it further appearing that the respondent James Clark is not as an individual engaged in the business of printing and selling railroad tariffs, as charged in the complaint; and it further appearing that the respondent Stromberg, Allen & Co. is not engaged in the business of printing and selling railroad tariffs, as charged in the complaint, now therefore:

*It is ordered*, That the complaint herein be, and the same is hereby, dismissed as to the respondents, Faithorn Co., James H. Walden, Walden Typesetting Co., James Clark, and Stromberg, Allen & Co.

**FEDERAL TRADE COMMISSION v. CONSOLIDATED OIL CO., NATHAN WEISENBERG AND A. BERNSTEIN, COPARTNERS, DOING BUSINESS UNDER THE FIRM NAMES AND STYLES OF STANDARD LINSEED CO., MANCHURIAN LINSEED CO., STANDARD PAINT & LEAD WORKS, SOUTHERN STATES TURPENTINE CO., AND EASTLAND LINSEED CO.**

**COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.**

**Docket No. 193.—November 12, 1918. Order modified December 19, 1919.**

**SYLLABUS.**

**Where a manufacturer of and dealer in paints, oils, turpentine, and kindred products—**

- (a) Used cuts, prints, pictures, and other representations on its letterhead which falsely represented its office, factory, plant, place of business, and equipment;**
- (b) Sold and offered for sale by advertisements and otherwise, oils, turpentine, and kindred products which had been adulterated, mixed, or compounded with low-grade mineral oil and other ingredients as and for pure products and without affirmatively indicating that the same were adulterated, compounded, or mixed;**
- (c) Advertised and offered for sale to the trade and to the general public "Japanese Oil" and "Second-run Turpentine," which products had been compounded, mixed, and adulterated with baser mineral oils and other ingredients, without affirmatively indicating that the same were adulterated, compounded, or mixed;**
- (d) Sold and offered for sale to the trade and general public a product called "Manchurian Linseed Oil Compound," which was not imported; and**

**Where an individual engaged in the manufacture and sale of oils, paints, turpentine, and kindred products—**

- (a) Published and circulated the false statement that the Ohio food and drug commission had ruled that linseed oil (and other products) not used for food or medicinal purposes, must be labeled "adulterated";**
- (b) Used cuts, prints, pictures, and other representations on his letterhead which falsely represented his office, factory, plant, or place of business;**
- (c) Sold or offered for sale linseed oil and kindred products which had been adulterated, mixed, or compounded with low-grade**

mineral oil and chemicals or other ingredients without affirmatively indicating that the same were adulterated, compounded, or mixed,

*Held*, That such acts constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

That the Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Consolidated Oil Co. and Nathan Weisenberg and A. Bernstein, copartners, doing business under the firm names and styles of Standard Linseed Co., Manchurian Linseed Co., Standard Paint & Lead Works, Southern States Turpentine Co., and Eastland Linseed Co., hereinafter referred to as the respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in this respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Consolidated Oil Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, having its principal office and place of business located at the city of Cleveland, in said State; that Nathan Weisenberg and A. Bernstein own and control a majority of the capital stock and are the dominant and controlling factors in the aforesaid corporation; that Nathan Weisenberg and A. Bernstein are copartners, doing business under the firm names and styles of Standard Linseed Co., Manchurian Linseed Co., Standard Paint & Lead Works, Southern States Turpentine Co., and Eastland Linseed Co., having their principal offices and places of business in the city of Cleveland, State of Ohio, and own and control a majority of the capital stock and are the dominant and controlling factors in the aforesaid copartnerships; that all of the said respondents are now and at all times hereinafter mentioned have been engaged in the business of manufacturing and selling paints, oils, turpentine, and

kindred products in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of their business the respondents purchase the component ingredients used in the manufacture of said paints, oils, turpentine, and kindred products in various States and Territories of the United States and transport the same through other States and Territories in and to the city of Cleveland, State of Ohio, where they are made and manufactured into the finished product; and sold and shipped to purchasers thereof; that after such products are so manufactured, they are continuously moved to, from, and among other States of the United States, the Territories thereof, and the District of Columbia; and there is continually and has been at all times herein mentioned a constant current of trade and commerce in said products between and among the various States and Territories of the United States, the District of Columbia, and foreign countries, and more particularly from other States and Territories of the United States and the District of Columbia to and through the city of Cleveland, State of Ohio, and from there to and through other States of the United States, Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondent within the two years last past, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of paints, oils, turpentine, and kindred products in interstate commerce, have sold and are now selling and offering for sale certain of their products which had been adulterated with a low-grade mineral oil and other ingredients by representing, holding out, and stating that the same was composed of "second-run" turpentine and Manchurian and Japanese oils prepared and made from oriental seeds and gums; that such representations and statements are false and misleading and calculated and designed to and do deceive the trade and the general public into believing respondent's products to be pure and unadulterated.

PAR. 4. That, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of paints, oils, turpentine, and kindred products in

interstate commerce, within the two years last past, respondents have stated and are now stating and representing by circular letters issued and published to the trade and general public that by virtue of a ruling of the Ohio food and drug commission the linseed oil and spirits of turpentine of respondents must be labeled adulterated, when in fact and truth no such ruling had or has been made; that such statements and representations are false and misleading and are calculated and designed to, and do, deceive the trade and general public into believing the said oil and turpentine of respondents are pure and unadulterated.

PAR. 5. That, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of paints, oils, turpentine, and kindred products in interstate commerce within the two years last past, respondents have used and are now using a cut upon their letterheads of several buildings, on one of which is marked "Laboratory" and another "Cooperage," with the intent and purpose of deceiving and misleading the trade, and general public into believing that the said cut represents the manufacturing plants as shown to be the plant of respondents, when in fact and truth respondents have no buildings marked "Laboratory" or "Cooperage" and do not own or operate the large plants as is represented and indicated by the said cut, that such representations so made by respondents on said letterheads are misleading and calculated and designed to and do deceive the trade and general public.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondents, Consolidated Oil Co., Nathan Weisenberg and Aaron Bernstein, have been and now are using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect;

and the respondents, The Consolidated Oil Co. (erroneously named in the complaint Consolidated Oil Co.), Nathan Weisenberg and Aaron Bernstein, having entered their appearance by David Perris, Esq., their attorney, duly authorized and empowered to act in the premises, and having filed their answer admitting that certain of the matters and things alleged in said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case, and in lieu of testimony and shall forthwith thereupon make and enter its report, stating its findings as to the facts and its conclusions, and its order disposing of this proceeding, without the introduction of testimony or the presentation of argument; therefore, the Federal Trade Commission now makes and enters this its report, stating its findings as to the facts and its conclusions, as to the respondents, The Consolidated Oil Co., Nathan Weisenberg, and Aaron Bernstein:

#### FINDINGS AS TO THE FACTS.

(1) That the respondent, The Consolidated Oil Co., is now and for more than two years last past has been, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, having its principal factory, office, and place of business located at the corner of Willey Avenue and Big Four Railroad, in the city of Cleveland, in said State, at all times hereinafter mentioned engaged in the business of manufacturing and selling paints, oils, turpentine, and kindred products in interstate commerce throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, in direct competition with other persons, firms, copartnerships, or corporations similarly engaged.

(2) That the respondent named as A. Bernstein in the complaint herein is Aaron Bernstein, and he and the respondent Nathan Weisenberg are and were at all times

herein mentioned residents of the county of Cuyahoga, State of Ohio, and are officers of and own and control a majority of the capital stock, and are the dominating and controlling factors of the respondent, The Consolidated Oil Co.

(3) That prior to the month of April, 1911, the respondents Nathan Weisenberg and Aaron Bernstein were co-partners doing business under the firm names and styles of Standard Linseed Co., Manchurian Linseed Oil Co., and Southern States Turpentine Co.; that in said month of April, 1911, the said respondents, Weisenberg and Bernstein, organized the respondent corporation, The Consolidated Oil Co., under the laws of the State of Ohio as aforesaid, and sold, transferred, and assigned to said corporation all of their right, title, and interest in and to said trade names.

(4) That for more than one year last past the respondent The Consolidated Oil Co., has carried on and conducted the paint and lead department of its business under the trade name and style of Standard Paint and Lead Works.

(5) That during the year prior to the filing of the complaint herein the respondents used, in the conduct of their business, a certain cut or picture upon their letterheads, representing several buildings, on one of which was marked "Laboratory" and on another "Cooperage," and that respondents during the time in which they used, circulated, and published such pictures and representations had no buildings marked "Laboratory" or "Cooperage" and did not own, lease, occupy, or operate the large plants represented and indicated by said cut or picture, and that such representations or such letterheads were calculated and designed to and did deceive the trade and general public.

(6) That for more than one year prior to the filing of the complaint herein the respondents have sold and offered for sale, oils, turpentine, and kindred products in interstate commerce, which had been adulterated, mixed, or compounded with low-grade mineral oil and other ingredients without notifying or informing or indicating to the customers and purchasers thereof that the same were adulterated, compounded, or mixed as aforesaid.

(7) That for more than one year prior to the filing of the complaint herein the respondents in the conduct of their business published, circulated, and caused to be published and circulated throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, certain advertisements and other printed matter wherein it was stated, set forth, and held out to the trade and general public that the respondents were offering to sell linseed oil and turpentine; that the linseed oil and turpentine so advertised and offered for sale were not pure linseed oil and pure turpentine, but the same had been adulterated, mixed, or compounded with baser mineral oil and other ingredients.

(8) That for more than one year prior to the filing of the complaint herein, the respondents in the conduct of their business, published, circulated, and caused to be published and circulated throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, certain advertisements and other printed matter, wherein it was stated, set forth, and held out to the trade and general public, that the respondents were offering to sell Japanese oil and second-run turpentine; that said Japanese oil and said second-run turpentine so advertised and offered for sale were not pure Japanese oil and pure turpentine, but had been compounded, mixed and adulterated with baser mineral oils and other ingredients.

(9) That for more than one year prior to the filing of the complaint herein, the respondents sold and offered for sale to the trade and general public, a product which they named and called "Manchurian Linseed Oil Compound"; that said product was compounded and mixed at the factory and place of business of the respondents, and was not imported from any foreign country.

(10) That for more than one year last past the respondents, in the conduct of their business, have sold as and for linseed oil and turpentine, compounds or mixtures of the same containing baser mineral oil and other ingredients.

(11) That the respondents in the conduct of their business, have never stated, represented, or held out by circular letters issued and published to the trade and general



public, that, by virtue of a ruling of the Ohio food and drug commission, the linseed oil and spirits of turpentine of respondents must be labeled adulterated.

(12) That the respondents are not carrying on and have never carried on and conducted their business under the trade name and style of Eastland Linseed Co., and have no business connection or relation whatsoever to one David Bernstein, doing business under such trade name and style, who has heretofore filed his separate answer to the complaint herein.

(13) That the effect of the acts and practices in the manner and form above mentioned and set forth may be to hinder, harass, and embarrass competitors of the respondents in the conduct of their business.

(14) That the corporate and legal name of respondent, Consolidated Oil Co., is "The Consolidated Oil Co.," and that at all times herein mentioned where said respondent is named and mentioned as "Consolidated Oil Co." it is stipulated and agreed that such company was and is "The Consolidated Oil Co."

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts, in paragraphs 5, 6, 7, 8, 9, 10, and 13, and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondents, The Consolidated Oil Co., Nathan Weisenberg, and Aaron Bernstein, having entered their appearance by David Perris, Esq., their attorney, duly authorized and empowered to act in the premises, and having filed their answer, and, thereafter, having made, executed, and filed an agreed statement of facts, in which they stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as

the evidence in this case and in lieu of testimony, and proceed forthwith upon the same to make and enter its report, stating its findings as to the facts and its conclusions, and its order, without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusions, that the respondents, The Consolidated Oil Co., Nathan Weisenberg, and Aaron Bernstein, have violated section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered,* That the respondents, The Consolidated Oil Co., its officers, agents, representatives, servants, and employees, and the respondents, Nathan Weisenberg and Aaron Bernstein, their agents, representatives, servants, and employees, cease and desist from directly or indirectly:

(1) Using cuts, prints, pictures, or other representations on their letterheads, or in their advertisements or other printed matter circulated and published by them, which falsely represent their office, or factory, or plant, or equipment, or place of business.

(2) Using the trade names, Standard Linseed Co., Manchurian Linseed Oil Co., Standard Paint and Lead Works, Southern States Turpentine Co., or any other similar trade name or style of doing business in any form, shape, or manner whatsoever, that will confuse or deceive the trade and general public as to the identity of the person or persons doing business under such trade name.

(3) Selling or offering for sale oils, turpentine, and kindred products which have been adulterated, mixed, or compounded with low-grade mineral oil and chemicals or other ingredients without notifying or informing or indicating to the purchasers thereof that the same are adulterated, compounded, or mixed as aforesaid.

(4) From selling or offering for sale any compound or mixture of oils or turpentine with cheaper oils, chemicals,

or other ingredients, as and for pure linseed oil or pure turpentine.

(5) From publishing, circulating, or causing to be published or circulated throughout the various States of the United States, the Territories thereof, the District of Columbia, or foreign countries advertisements, circular letters or any other printed matter whatsoever, wherein it is stated, set forth, or held out to the trade and general public that the respondents are offering to sell linseed oil or turpentine, when the product so offered or advertised has been adulterated, mixed, or compounded with baser mineral oil, chemicals, or other ingredients unless it is clearly, definitely, and distinctly stated or indicated or shown to the purchasers or prospective purchasers thereof that the same are such.

(6) From selling or offering for sale in any manner whatsoever, paints, oils, turpentine, or kindred products which have been adulterated, or which contain adulterated ingredients, as and for pure products.

(7) Selling or offering for sale in any manner whatsoever, linseed oil or turpentine or kindred products which have been mixed or compounded with cheaper oils, chemicals, or other ingredients by the respondents at their place of business in the city of Cleveland, or in any other place within the United States, under the trade names of "Japanese Oil" or "Manchurian Linseed Oil" or any other similar or like trade name, unless it be clearly, definitely, and distinctly shown and indicated to the purchasers or prospective purchasers thereof, that the same are not imported from any foreign country, but are manufactured, made, mixed, or compounded within the United States.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER AGAINST DAVID BERNSTEIN.

The Federal Trade Commission, having issued and filed its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondents, Consolidated Oil Co., Nathan Weisenberg and A. Bernstein, copartners, doing business under the firm names and styles of Standard Linseed Co., Manchurian Linseed Co., Standard Paint &

Lead Works, Southern States Turpentine Co., Eastland Linseed Co., have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and David Bernstein, having entered his appearance by Emanuel F. Wohlwert, his attorney, duly authorized to act in the premises, and having filed his answer saying that he is the respondent named herein as Eastland Linseed Co., and is doing business under such trade name and style and admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth and denying others therein contained, and thereafter having entered into an agreed statement of facts wherein it is stipulated and agreed by and between the respondent and the Commission that such statement of facts so made and heretofore filed with the Commission, are the facts in this case, and are to be taken by the Commission in lieu of testimony, and that the Commission shall forthwith proceed upon said agreed statement of facts to make and enter its report stating its findings as to the facts and conclusions and its order without the introduction of testimony, and waiving any and all right to the taking of such testimony and argument in support of the same, the Commission upon said agreed statement of facts now makes and enters this its report stating its findings as to the facts and its conclusions, as to the respondent, David Bernstein, doing business under the trade name and style of Eastland Linseed Co.

#### FINDINGS AS TO THE FACTS.

(1) That the respondent, David Bernstein, is a resident of the State of Ohio, with his office, factory, and place of business located at the city of Cleveland, in said State, and is now, and for more than one year last past has been, engaged in the business of manufacturing and selling paints, oils, turpentine, and kindred products in interstate commerce in direct

competition with other persons, firms, copartnerships, and corporations similarly engaged.

(2) That respondent, for more than one year last past, has sold and offered for sale to the trade and the public generally a mixture of pure linseed oil and mineral oil and acids, known as dryers, under the trade names of Calcutta Linseed Oil Compound and Argentine Linseed Oil Compound.

(3) That within the two years last past the respondent in letters circulated generally among the trade throughout the country has held out and stated that—

On account of recent ruling of the Ohio food and drug commission, all linseed oil, spirits of turpentine, Soya bean oil, corn oil, etc., that is not used for food and medical purposes must be labeled adulterated, and that said Ohio food and drug commission has never made such ruling.

(4) That within the two years last past in the conduct of his business, respondent has used a certain letterhead for his correspondence on which there was pictured a boat which bore the name "Eastland," moored to a wharf behind which stood a large factory or elevator.

(5) That the office and place of business of the respondent is located at No. 5716 Euclid Avenue, in the city of Cleveland, State of Ohio, and that he has a warehouse at No. 625 Champlain Avenue, in said city, and that respondent is not now, nor has been in the last two years, owner of any large factory or elevator located by the side of a navigable stream, nor is he now, nor has he been, the owner of any boat or vessel whatsoever which he has used in the conduct of his business.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 3 and 4 and each of them are under the circumstances above set forth unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein and David Bernstein, having entered his appearance by Emanuel F. Wohlwert, his attorney, duly authorized to act in the premises, and having filed his answer saying that he is doing business under the trade name and style of Eastland Linseed Co., named in said complaint as a respondent, and thereafter having made, executed, and filed an agreed statement of facts in which he stipulated and agreed that the Federal Trade Commission should take said agreed statement of facts as the evidence in this case and in lieu of testimony and proceed forthwith upon the same to make and enter its report, stating its findings as to the facts and its conclusions and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusions, that the respondent, David Bernstein, has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered* That the respondent, David Bernstein, of Cleveland, State of Ohio, and his agents, representatives, servants, and employees, cease and desist from directly or indirectly:

1. Making, circulating, publishing, or advertising in any manner whatsoever, the statement that—

On account of recent ruling of the Ohio food and drug commission, all linseed oil, spirits of turpentine, Soya bean oil, corn oil, etc., that is not used for food and medical purposes must be labeled adulterated.

2. Using cuts, prints, pictures, or other representations on his letterheads or in his advertisements or other printed matter circulated and published by him which falsely represent his office or factory or plant or place of business or equipment.

3. Using the trade names Eastland Linseed Co., National Linseed Co., Great Lakes Refining Co., Republic Paint & Lead Works, or any other similar trade name or style of doing business in any form, shape, or manner whatsoever that will confuse or deceive the trade and general public as to the identity of the person or persons doing business under such trade name.

4. Selling or offering for sale oils, turpentine, and kindred products which have been adulterated, mixed, or compounded with low grade mineral oil and chemicals or other ingredients, without notifying or informing or indicating to the purchasers thereof that the same are adulterated, compounded or mixed as aforesaid.

5. From selling or offering for sale any compound or mixture of oils or turpentine with cheaper oils, chemicals, or other ingredients, as and for pure linseed oil or pure turpentine.

6. From publishing, circulating, or causing to be published or circulated throughout the various States of the United States, the Territories thereof, the District of Columbia, or foreign countries, advertisements, circular letters, or any other printed matter whatsoever, wherein it is stated, set forth, or held out to the trade and general public that the respondent is offering to sell linseed oil or turpentine, when the product so offered or advertised has been adulterated, mixed, or compounded with baser mineral oil, chemicals, or other ingredients, unless it is clearly, definitely, and distinctly stated or indicated or shown to the purchasers or prospective purchasers thereof, that the same are such.

7. Selling or offering for sale in any manner whatsoever, paints, oils, turpentine, or kindred products which have been adulterated or which contain adulterated ingredients, as and for pure products.

8. Selling or offering for sale in any manner whatsoever, linseed oil or turpentine or kindred products, which have been mixed or compounded with cheaper oils, chemicals, or other ingredients by the respondent at his place of business in the city of Cleveland or in any other place within the United States, under the trade names of Calcutta Linseed Oil Compound, Argentine Linseed Oil Compound, or

any other similar or like trade names, unless it is clearly, definitely, and distinctly shown and indicated to the purchasers or prospective purchasers thereof, that the same are not imported from any foreign country, but are manufactured, made, mixed, or compounded within the United States.

MODIFIED ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and David Bernstein, having entered his appearance by Emanuel F. Wohlwert, his attorney, duly authorized to act in the premises, and having filed his answer saying that he is doing business under the trade name and style of Eastland Linseed Co., named in said complaint as a respondent, and thereafter having made, executed, and filed an agreed statement of facts in which he stipulated and agreed that the Federal Trade Commission should take said agreed statement of facts as the evidence in this case and in lieu of testimony and proceed forthwith upon the same to make and enter its report, stating its findings as to the facts and its conclusions and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusions that the respondent, David Bernstein, has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof, and the Commission having heretofore, to wit, on the 12th day of November, 1918, entered and served its order upon the respondent requiring him to cease and desist from certain practices, as reference to the said order being had will more fully and at large appear:

And it appearing to the Commission, upon reconsideration of the matter, that said order should be modified in certain respects:

Now, therefore, the Federal Trade Commission, on its own motion, under and by virtue of the provisions of section 5 of an act of Congress approved September 26, 1914, enti-



tled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," hereby orders that the order to cease and desist heretofore made in this proceeding on the 12th day of November, 1918, be, and the same is, hereby modified, so that, as modified, said order shall read as follows, to wit: Now, therefore,

*It is ordered*, That the respondent, David Bernstein, of Cleveland, State of Ohio, and his agents, representatives, servants, and employees, cease and desist from directly or indirectly:

(1) Making, circulating, publishing, or advertising in any manner whatsoever, the statement that—

On account of recent ruling of the Ohio food and drug commission, all linseed oil, spirits of turpentine, soya bean oil, corn oil, etc., that is not used for food and medical purposes, must be labeled adulterated.

(2) Using cuts, prints, pictures, or other representations on his letterheads, or in his advertisements, or other printed matter circulated and published by him, which falsely represent his office, or factory, or plant, or place of business, or equipment.

(3) Selling or offering for sale linseed oils and kindred products, which have been adulterated, mixed, or compounded with low grade mineral oil and chemicals, or other ingredients, without notifying, or informing, or indicating to the purchasers thereof that the same are adulterated, compounded, or mixed, as aforesaid.

(4) Selling or offering for sale any compound or mixture of oils with cheaper oils, chemicals, or other ingredients, as, and for, pure linseed oil.

(5) Publishing, circulating, or causing to be published or circulated throughout the various States of the United States, the Territories thereof, the District of Columbia, or foreign countries, advertisements, circular letters, or any other printed matter whatsoever, wherein it is stated, set forth, or held out to the trade and general public that the respondent is offering to sell linseed oil when the product so offered or advertised has been adulterated, mixed, or compounded with baser mineral oil, chemicals, or other ingredients, without clearly, definitely, and distinctly stating

or indicating or showing to the purchasers or prospective purchasers thereof the true character thereof.

(6) Selling or offering for sale, in any manner whatsoever, linseed oils or kindred products which have been adulterated or which contain adulterated ingredients, as, and for, pure products.

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## FEDERAL TRADE COMMISSION *v.* THE SILVEX CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 192.—December 24, 1918.

### SYLLABUS.

Where a corporation engaged in the manufacture and sale of spark plugs falsely advertised that its product had been certified by the Bureau of Standards of the United States Department of Commerce:

*Held*, That such advertisement constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that The Silvex Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondent, The Silvex Co., is now and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, having its principal office and place of business at South Bethlehem in said State, and is now and for more than two years last past has been engaged in the business of manufacturing

spark plugs and then selling them to various customers throughout the different States and Territories of the United States, and the District of Columbia and foreign countries, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, the Silvex Co., in the conduct of its business, manufactures, moves, and distributes its spark plugs to, from, and among the State of Pennsylvania and other States and Territories of the United States, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in such spark plugs between and among the various States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That the component parts used by the respondent in the manufacture of its spark plugs have been tested by the United States Department of Mines, and that respondent has so worded and constructed an advertisement by referring to said test that is calculated and designed to and does mislead the trade and general public into the belief the spark plugs so manufactured and sold by respondent have been certified by the United States Department of Mines.

PAR. 4. That the respondent, within the year last past, has published and caused to be published the aforesaid advertisement in newspapers, magazines, periodicals, trade papers and other publications circulated throughout the States and Territories of the United States and District of Columbia and foreign countries with the purpose, intent and effect of stifling and suppressing competition in the sale of spark plugs in interstate commerce.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, The Silvex Co., has been, and now is, using unfair methods of competition in interstate commerce, in violation of the provisions of sec-

tion 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect; and respondent having entered its appearance by Dallett H. Wilson, its attorney, duly authorized and empowered to act in the premises, and filed its answer, admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed, in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the evidence in this case and in lieu of testimony, and shall forthwith thereupon make and enter its report, stating its findings as to the facts and its conclusions, and its order, disposing of this proceeding without the introduction of testimony or presentation of argument, the Federal Trade Commission now makes and enters this, its report, stating its findings as to the facts and its conclusion.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Silvex Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal factory, office, and place of business located at the borough of Hellertown, in the State of Pennsylvania, now, and for more than two years last past, engaged in the business of manufacturing and selling spark plugs in interstate commerce throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That within the year last past the respondent has sold to the Government of the United States large quantities of its product, and the same have been accepted by the Government.

PAR. 3. That respondent's spark plugs have never been tested by the United States Department of Mines, but that the same have been tested, according to the tests made by the Bureau of Standards of the United States Department of Commerce.

PAR. 4. That respondent's Bethlehem aviation spark plugs have never been certified by the Bureau of Standards of the United States Department of Commerce.

PAR. 5. That on April 19, 1918, the respondent printed and caused to be circulated a certain letter, in which it is stated and held out that its Bethlehem aviation spark plug had been certified by the Bureau of Standards.

#### CONCLUSION.

That the method of competition set forth in the foregoing findings as to the facts in paragraph 5, is, under the circumstances therein set forth, an unfair method of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent, having entered its appearance by Dallett H. Wilson, its attorney, duly authorized to act in the premises, and having filed its answer, and thereafter having made and entered into an agreed statement of facts, wherein it is stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and should proceed forthwith upon the same to make and enter its report, stating its findings as to the facts and its conclusion, and its order, disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony; and the Commission having made and filed its report containing its findings as to the facts and its conclusion that the respondent has violated section 5 of an act

of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered*, That the respondent, The Silvex Co., of New York, and its officers, directors, representatives, agents, servants, and employees cease and desist from directly or indirectly advertising or publishing or circulating or distributing any circular letter, advertisement or printed matter whatsoever, in which it is stated or held out that respondent's Bethlehem aviation spark plug has been "certified by the Bureau of Standards."

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## FEDERAL TRADE COMMISSION *v.* VACUUM OIL CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26,  
1914.

Docket No. 219.—December 27, 1918.

### SYLLABUS.

Where an oil company—

- (a) shipped large quantities of goods to its customers and customers of its competitors, without theretofore having received orders for the same; and,
- (b) induced and attempted to induce such consignees to accept and purchase the goods so shipped, by (1) the extension of long time credits, and (2) guaranteeing the resale of such consignments and the assistance of its salesmen in procuring the same:

*Held*, That such acts constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

I. The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that the Vacuum Oil Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its

powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Vacuum Oil Co., is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business located in the city of New York, State of New York, now and for more than one year last past engaged in commerce in petroleum and in the manufacture, sale, and distribution of its products in direct competition with other persons, firms, corporations, and copartnerships similarly engaged.

PAR. 2. That the respondent, Vacuum Oil Co., is engaged in the business of purchasing petroleum in oil-producing districts of the United States; in causing to be shipped and transported crude oil from such districts through and into other States; in refining the petroleum and manufacturing it into various products; in shipping and transporting petroleum products through and into different States of the United States and in selling petroleum products in different localities in various States of the United States and in the District of Columbia; that after such products are so manufactured in various States of the United States they are continuously moved to, from and among other States and Territories of the United States, the District of Columbia, and foreign countries, and there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in said products between and among the various States and Territories of the United States, the District of Columbia, and foreign countries, and especially through and to the city of Olean, State of New York, and therefrom to and through other States of the United States, the Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondent, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture, sale, and distribution of petroleum products in interstate commerce within the year last past has adopted

and maintained a system of marketing its various petroleum products, whereby it ships at market prices to various customers of its competitors, large quantities of its products without having theretofore sold or received orders for the same, and in the furtherance of said system the respondent induces and attempts to induce such consignees to accept and purchase such consignments so shipped as aforesaid by various means and methods among which are the following, to wit:

1. The extension of long-time credits.
2. Guaranteeing the resale of such consignments and the assistance of its salesmen in procuring the same.

That such system and methods are calculated and designed to and do enlarge respondent's gallonage output and cause the customers of its competitors to be overstocked, and to hinder, harass, and restrain such competitors in the conduct of their business.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, Vacuum Oil Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having appeared by Edward Prizer, its president, and filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form herein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the evidence in this case and in lieu of testimony and pro-



ceeding forthwith thereupon to make and enter its report, stating its findings as to the facts and its conclusions and its order, disposing of this proceeding without the introduction of testimony, or the presentation of argument, the Federal Trade Commission now makes and enters its report, stating its findings as to the facts and its conclusions.

#### FINDINGS AS TO THE FACTS.

1. That the respondent, Vacuum Oil Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business located in the city and State of New York, now and for more than one year last past engaged in the manufacture and sale of petroleum and its products generally in commerce throughout the various States of the United States in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

2. That during the month of November, 1917, the manager of the Des Moines office of the respondent company shipped at market prices to various customers of the respondent and to customers of its competitors throughout the State of Iowa large quantities of its products without having theretofore sold or received orders for the same, and induced and attempted to induce such consignees to accept and purchase such consignments so shipped as aforesaid, by (1) the extension of long-time credits, and (2) guaranteeing the resale of such consignments and the assistance of respondent's salesmen in procuring the same.

3. That the method of selling and practice of selling and marketing its products as described and set forth in paragraph 2 herein was carried on, concluded, and consummated by the manager of the Des Moines office of the respondent company without the knowledge or consent of the respondent and without the knowledge and consent of Willard W. Smith, general manager of the western branches of the respondent company.

4. That the respondent does not now and never has maintained a policy of marketing and selling its products without orders therefor.

## CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraph 2 and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondent having appeared by Edward Prizer, its president, duly authorized to act in the premises, and having filed its answer and thereafter having made and entered into an agreed statement of facts as the evidence in this case and in lieu of testimony, and should proceed forthwith upon the same to make and enter its report, stating its findings as to the facts, and its conclusions and its order, disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony; and the Commission having made and filed its report containing its findings as to the facts, and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes:" Now, therefore,

*It is ordered,* That the respondent, Vacuum Oil Co., of New York, and its officers, directors, representatives, agents, servants, and employees cease and desist from directly or indirectly shipping to its customers or prospective customers, or the customers or prospective customers of its competitors any of its products at market prices without having theretofore sold or received orders for the same, and inducing or attempting to induce the consignees in any manner whatsoever to accept and purchase such consignments as aforesaid.

FEDERAL TRADE COMMISSION *v.* GARTSIDE  
IRON RUST SOAP CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 190.—February 2, 1919.

SYLLABUS.

Where a manufacturer and vendor of a stain remover—

- (a) falsely claimed that its preparation was covered by patent;
- (b) falsely charged that the preparations of competitors were infringements of such alleged patent;
- (c) threatened to bring suits for infringement of its alleged patent against competitors and their customers, such threats not being made in good faith, intending to bring such suits, but for the purpose of injuring said competitors and of intimidating them and their agents, customers, and prospective customers; and
- (d) circulated false and misleading statements to the effect that certain competitors were financially irresponsible:

*Held*, That such acts constituted unfair methods of competition, in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that Gartside Iron Rust Soap Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That the respondent, Gartside Iron Rust Soap Co., is now and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, having its principal office and place of business in the city of Philadelphia, in said State, and is now and for more than two years last past, has been engaged in the manufacture and

sale in commerce among the various States and Territories of the United States and the District of Columbia, of a certain preparation known as Iron rust soap for use in removing iron rust, ink, fruit, and medicine stains from clothing, marble, and the like, in direct competition with other persons, firms, corporations, and copartnerships engaged in manufacturing preparations for similar purposes.

PAR. 2. That the respondent, by means of notices in letters, circulars, pamphlets, and advertising circulated through the trade and by oral statements made by its officers, directors, agents, servants, and employes, to competitors and to competitors' customers, and to others with whom said competitors were and are contracting or endeavoring to contract, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of preparations for removing iron rust, ink, fruit, and medicine stains from clothing, marble, and the like, within two years last past has represented and still does represent that the manufacture and sale of preparations for removing iron rust, ink, fruit, and medicine stains from clothing, marble, and the like, manufactured by competitors of respondent, were and are infringements of a patent granted to the respondent, and were and are marketed in a form calculated to deceive the public into the belief that such preparations are the products of the respondent; that the respondent within two years last past has threatened and is now threatening suits for such alleged infringements and unfair competition against such manufacturers and against all persons using or dealing in such products of such competitors; that said threats have not been made in good faith but for the purpose of intimidating competitors of respondent and the agents, servants, employees, customers, and prospective customers of competitors of the respondent.

PAR. 3. That with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of preparations for removing iron rust, ink, fruit, and medicine stains from clothing, marble, and the like, the respondent within two years last past has sent and continues to send to its customers and the custom-

ers, agents, servants, employees, and officers of its competitors and other persons, letters, circulars, and pamphlets containing statements to the effect that certain competitors of respondent were and are financially irresponsible, which statements were and are false and misleading, and known by the respondent so to be, and not made in good faith but for the purpose, intent and effect of inducing and compelling users and agents for the sale of preparations for removing iron rust, ink, fruit, and medicine stains from clothing, marble, and the like, from using such preparations manufactured by competitors of the respondent.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having duly issued and served upon the above-named respondent, its complaint herein, wherein it alleged upon information and belief that said respondent has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and fully stating its charges in that respect, and the said respondent having duly entered its appearance and filed its answer to said complaint, admitting certain allegations therein contained and denying certain others thereof, and the issues so raised having, pursuant to due notice given to all parties interested, duly come on for hearing at Philadelphia, Pa., on the 8th day of January, 1919, and the Federal Trade Commission having duly appeared and introduced its evidence in support of its said charges, and the said respondent, having duly appeared in person and by attorney and introduced his evidence in denial thereof, and all testimony heard at said hearing having been reduced to writing, and together with the evidence received having been duly filed in the office of the Commission, and said respondent having duly waived all rights to make argument or file a brief herein, the Commission now makes this its report and findings as to the facts and conclusions.

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is Joseph H. Gartside and that said respondent is now and for more than two years last past has been engaged in business as a sole trader under the name and style of Gartside Iron Rust Soap Co., and that during said time said respondent's principal office and place of business has been located in the city of Philadelphia, in the State of Pennsylvania; and that said respondent is now and for more than two years last past has been engaged in the manufacture and sale in commerce among the various States and Territories of the United States and the District of Columbia, of a certain preparation known as Iron rust soap, for use in removing iron rust, ink, fruit, and medicine stains from clothing, marble, and the like, in direct competition with other persons, firms, corporations, and copartnerships engaged in manufacturing preparations for similar purposes.

PAR. 2. That the respondent, by means of notices in letters, circulars, and advertisements sent to and circulated among his said competitors and their customers, and others with whom said competitors were and are contracting or endeavoring to contract, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of preparations for removing iron rust, ink, fruit and medicine stains from clothing, marble, and the like, within the two years last past, has represented and still does represent that the manufacture and sale of preparations for removing iron rust, ink, fruit and medicine stains from clothing, marble, and the like, manufactured by competitors of the respondent, were and are infringements of a patent granted to respondent; that said respondent is not and never has been the owner of a patent in the said preparation; that respondent within the two years last past has threatened and is now threatening suits for such alleged infringements and unfair competition against such manufacturers and persons using or dealing in such products of such competitors; that such threats have not been made in good faith, but for the purpose and with the effect of intimidating competitors of respondent and their agents, customers, and prospective customers.

PAR. 3. That with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of preparations for removing iron rust, ink, fruit and medicine stains from clothing, marble, and the like, the respondent within two years last past has sent and continues to send to its customers and the customers and agents of its competitors and other persons, letters and circulars containing statements to the effect that certain competitors of respondent were and are financially irresponsible, which statements were and are false and misleading and known by the respondent so to be, and not made in good faith but for the purpose and with the intent of inducing users and agents for the sale of preparations for removing iron rust, ink, fruit and medicine stains from clothing, marble, and the like, to refrain from using or dealing in such preparations manufactured by competitors of the respondent.

#### CONCLUSIONS.

That the acts and conduct of the respondent set forth in paragraphs 2 and 3 of the foregoing findings as to the facts are unfair methods of competition in interstate commerce and as such are within the meaning, and in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having duly issued and served upon the above-named respondent, its complaint herein wherein it alleged upon information and belief that said respondent has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and fully stating its charges in that respect, and the said respondent having duly entered his appearance and filed his answer to said complaint, admitting certain

allegations therein contained and denying certain others thereof, and the issues so raised having, pursuant to due notice given to all parties interested, duly come on for hearing at Philadelphia, Pa., on the 8th day of January, 1919, and the Federal Trade Commission, having duly appeared and introduced its evidence in support of its said charges, and the said respondent having duly appeared in person and by attorney and introduced his evidence in denial thereof, and all testimony heard at said hearing having been reduced to writing, and together with the evidence received, having been duly filed in the office of the Commission, and said respondent having duly waived all rights to make argument or file a brief herein, and the Commission having duly made and filed its report wherein it set forth its findings as to the facts and its conclusions that respondent has violated the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered,* That the respondent, Joseph H. Gartside, doing business under the name and style of Gartside Iron Rust Soap Co., at Philadelphia, Pa., cease and desist from falsely representing by means of notices contained in letters, circulars, advertisements, or by any means whatsoever, that he is the owner of letters patent or anything similar thereto, issued by the United States Patent Office, which gives him the exclusive right to make, use, and vend a preparation for removing iron rust, ink, fruit, and medicine stains from clothing, marble, and the like, and from falsely representing that the manufacture, sale, or use of preparations for removing iron rust, ink, fruit, and medicine stains from clothing, marble, and the like, manufactured by competitors of respondent are an infringement of a patent granted to the respondent; and from intimidating or interfering with his competitors or their agents, customers or prospective customers by threatening to sue them for such alleged infringements, or by falsely representing that certain of his competitors are financially irresponsible.



FEDERAL TRADE COMMISSION *v.* GORDON-VAN  
TINE CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS, APPROVED SEPTEMBER 26, 1914.

Docket No. 220.—February 6, 1919.

## SYLLABUS.

Where a mail-order house dealing in lumber and building materials—

- (a) Published and circulated an advertisement purporting to be a quotation from an order of the Federal Trade Commission against certain competitors, such advertisement being false, misleading, and a gross misrepresentation of said order;
  - (b) Paid and offered to pay secret commissions to contractors, builders, and carpenters, as an inducement to influence them to favor the sale of its goods to others;
  - (c) Made false or misleading statements to the effect—
    - (1) That the United States vouched for and guaranteed its reliability and honesty, and that the Post Office Department censored its advertising matter;
    - (2) That its lumber products were of its own manufacture, thereby giving customers the benefit of mill or manufacturers' price;
    - (3) That certain of its competitors were members of a lumber trust which fixed and maintained excessive and unreasonable prices;
    - (4) That it was the only firm which made prices both ways on lumber material, i. e., ready-cut-to-fit, and not ready-cut; and,
    - (5) That it saved its purchasers \$200 to \$500 per building as compared with similar purchases from "regular dealers."
- Held*, That such acts constituted unfair methods of competition, in violation of section 5 of the act of September 26, 1914.

## COMPLAINT.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that the Gordon-Van Tine Co., hereinafter referred to as respondent, has been, and is, using unfair methods of competition in interstate commerce, in violation of the provisions of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Gordon-Van Tine Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Iowa, having its principal office and place of business at the city of Davenport, in said State, now, and for more than two years last past, engaged in the manufacture and sale of lumber and building materials among the several States and Territories of the United States, and the District of Columbia, in direct competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR 2. That, in the conduct of its business, respondent purchases lumber and building materials in the various States of the United States and the Territories thereof, and transports the same through other States and Territories in and to the town of Davenport, in the State of Iowa, and other points of concentration, where they are sold and shipped to purchasers in different States and Territories of the United States through the medium of mail orders; and there is continuously, and has been at all times herein mentioned, a constant current of trade and commerce in said lumber and building materials between and among the various States and Territories of the United States, the District of Columbia and foreign countries, and especially from other States and Territories of the United States to and through the town of Davenport, State of Iowa, and therefrom to and through other States and Territories of the United States, the District of Columbia, and foreign countries.

PAR. 3. That there exist certain commercial establishments in all or most of the States of the United States which now are, and for several years last past have been engaged in selling lumber and building materials in interstate commerce through the medium and means of yards located in different cities of the various States and are usually referred to in the lumber industry as "regular dealers" as distinguished from so-called catalogue or mail-order houses; that such establishments usually sell lumber and building materials in the community wherein they are located and that such establishments purchase lumber and building materials in large quantities in interstate commerce from manufacturers and wholesalers.

PAR. 4. That the respondent, within the year last past, with the intent, purpose, and effect of stifling and suppressing competition in the sale of lumber and building materials in interstate commerce, has published and circulated in various periodicals, magazines, trade journals, and catalogues an advertisement which purports to be an order and decision of the Federal Trade Commission in certain proceedings instituted and carried on by the Federal Trade Commission against certain "regular dealers" of lumber wherein such dealers were charged with unfair methods of competition in interstate commerce; such publication being as follows:

FEDERAL TRADE COMMISSION SAYS "MARAUDING TACTICS OF UNFAIR  
COMPETITION MUST CEASE."

A victory has been won for you and for us.

Through coercion, threats, misrepresentation, and subterfuge, retail lumber dealers have for years attempted to prevent us from selling to you and to keep you from buying from us.

Now, the Federal Trade Commission has stepped in, and said: "No interference! A square deal for everybody!" From now on, you can buy wherever you please without being bothered, boycotted, or bluffed.

There is only one reason, of course, why the concerns against whom this Government order has been issued, followed these unfair methods. They knew that Gordon-Van Tine's immense buying resources, systematized operations, and big volume of business enabled us to undersell them in their own market and "give better value!"

And when they couldn't compete fairly, they attempted to do it unfairly.

We could ask no better evidence of our ability to furnish you the highest grade building material at less-than-local-dealer prices than the situation which occasioned this Federal ruling,

following which is set out a list of the "regular dealers" against whom the said order issued. That the above advertisement so published and circulated is false, misleading and a gross misrepresentation of the terms of the said order and decision issued by the Commission in the aforementioned proceedings and it does not fairly and truthfully represent to the public the Commission's order and decision in the said proceedings.

PAR. 5. That in the course of its business of selling lumber and building materials in interstate commerce, the respondent, Gordon-Van Tine Co., for more than two years last past

has secretly, and without the knowledge of the purchaser or consumer, offered and paid to local contractors, builders, and carpenters, a bonus or so-called commission as an inducement to influence such contractors and builders to push or favor the sale of respondent's lumber and building materials over those of its competitors.

PAR. 6. That the respondent, Gordon-Van Tine Co., with the intent, purpose, and effect of injuring and embarrassing and discrediting its competitors, for more than two years last past has circulated catalogues and published statements through the various States and Territories of the United States, the District of Columbia, and in foreign countries among customers and prospective customers of competitors, containing certain advertisements wherein it is represented that—

(a) The United States Government vouches for and guarantees the reliability, honesty, and business methods of the respondent, and that such statements carry the impression that the Post Office Department censors the respondent's advertising matter.

(b) Respondent sells its products from the mill direct to the customer, imputing it manufactures all the lumber products which it sells, thereby giving the customers the benefit of mill or manufacturers' prices.

(c) Certain competitors of respondent are members of the Lumber Trust, by means of which excessive and unreasonable prices for lumber and building materials are fixed and maintained, thus wrongfully and falsely charging that such competitors do not deal justly and fairly.

(d) Respondent is the only firm that makes prices both ways on lumber materials, i. e., ready-cut-to-fit, and not-ready-cut.

(e) Respondent does a much larger volume of business, buying lumber and building materials in larger quantities than do such "regular dealers" and that this enables them to buy at a lower price and obtain greater discounts, and keep on hand a bigger stock from which the purchaser may select such materials as he desires than do such "regular dealers," and that the purchaser is given the benefit of all of such sales and that respondent saves for the consumer

from 25 to 50 per cent, or in amount from \$200 to \$500 per building of what such purchaser or consumer would be compelled to pay for the same materials if purchased from a "regular dealer."

That such statements and advertisements are in truth false, deceptive, and misleading, and do unfairly tend to, and do deceive and mislead such purchasers, and further do injure, damage, and discredit the so-called "regular dealers" and create and foster a suspicion in the minds of prospective purchasers of lumber and building materials that such regular dealers, as a class, do not deal fairly, and that such advertisements are calculated and designed to deceive the trade and general public.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above named respondent, Gordon-Van Tine Co., has been, within the two years last past, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent, Gordon-Van Tine Co., having entered its appearance by H. V. Scott, Esq., its vice president, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as the evidence in this case and in lieu of testimony, and shall forthwith thereupon make and enter its report, stating its findings as to the facts and its conclusions, and its order disposing of this proceed-

ing, without the introduction of testimony or the presentation of argument; now, therefore, the Federal Trade Commission makes and enters this, its report, stating its findings as to the facts and its conclusions as to the respondent, Gordon-Van Tine Co.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Gordon-Van Tine Co., is now, and for more than two years last past has been, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Iowa, having its principal factory, office, and place of business located in the city of Davenport, State of Iowa, at all times hereinafter mentioned engaged in the business of manufacturing and selling lumber and building materials in interstate commerce throughout the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That there exists certain commercial establishments in all or most of the States of the United States which now are, and for several years last past have been, engaged in selling lumber and building materials in interstate commerce through the medium and by means of yards located in different cities of the various States and are usually referred to in the lumber industry as "regular dealers" as distinguished from so-called catalogue or mail order houses; that such establishments usually sell lumber and building materials in the community wherein they are located and that such establishments purchase lumber and building materials in large quantities in interstate commerce from manufacturers and wholesalers; and that respondent, Gordon-Van Tine Co., is, and has been within the two years last past, in direct competition with such "regular dealers."

PAR. 3. That during the year prior to the filing of the complaint herein, the respondent, Gordon-Van Tine Co., printed and circulated by means of circulars, an advertisement which purported to be a quotation from an order of the Federal Trade Commission in certain proceedings instituted and

carried on by said Federal Trade Commission against certain "regular dealers" of lumber, wherein such dealers were charged with unfair methods of competition in interstate commerce, such advertisements being in the words and figures as follows, to wit:

**FEDERAL TRADE COMMISSION SAYS "MARAUDING TACTICS OF UNFAIR COMPETITION MUST CEASE."**

A victory has been won for you and for us.

Through coercion, threats, misrepresentation, and subterfuge, retail lumber dealers have for years attempted to prevent us from selling to you and to keep you from buying from us.

Now, the Federal Trade Commission has stepped in, and said: "No interference! A square deal for everybody." From now on you can buy wherever you please without being bothered, boycotted, or bluffed.

There is only one reason, of course, why the concerns against whom this Government order has been issued, followed these unfair methods. They knew that Gordon-Van Tine's immense buying resources, systematized operations, and big volume of business enabled us to undersell them in their own market and "give better value."

And when they couldn't compete fairly, they attempted to do it unfairly.

We could ask no better evidence of our ability to furnish you the highest-grade building material at less-than-local dealers prices than the situation which occasioned this Federal ruling,

following which is set out a list of the "regular dealers" against whom the aforesaid order was issued. That the above advertisement so printed and circulated is false, misleading, and a gross misrepresentation of the terms of the said order issued by the Commission in the aforementioned proceeding and it does not fairly and truthfully represent to the public the Commission's order in the said proceeding. That the aforesaid advertisement so printed and circulated was calculated and designed to, and did deceive the trade and general public.

PAR. 4. That, in the course of its business of selling lumber and building materials in interstate commerce the respondent, Gordon-Van Tine Co., for more than two years last past did offer to pay to local contractors, builders, and carpenters a bonus or so-called commission without the knowledge of the purchaser or consumer, as an inducement to influence such contractors or builders to push or favor the sale of respond-

ent's lumber and building materials over those of its competitors.

PAR. 5. That the respondent, Gordon-Van Tine Co., for more than two years last past has circulated, by means of catalogue and letters, statements and advertisements throughout the various States and Territories of the United States among customers and prospective customers of competitors, wherein it is represented, stated and held out that—

(a) The United States Government vouches for, and guarantees the reliability, honesty, and business methods of the respondent; and that such statements carry the impression that the Post Office Department censors respondent's advertising matter;

(b) Respondent manufactures all the lumber products which it sells, thereby giving customers the benefit of mill or manufacturer's prices;

(c) Certain competitors of respondent are members of the Lumber Trust, by means of which excessive and unreasonable prices for lumber and building materials are fixed and maintained;

(d) Respondent is the only firm that makes prices both ways on lumber material, i. e., ready-cut-to-fit, and not ready-cut;

(e) Respondent saves for the purchasers of its products an amount of \$200 to \$500 per building of what such purchaser or consumer would be compelled to pay if purchased from a "regular dealer."

That such statements and advertisements are false, deceptive, and misleading and do unfairly tend to, and do, deceive and mislead such purchasers, and further do injure, damage, and discredit the so-called "regular dealers" and create and foster a suspicion in the minds of prospective purchasers of lumber and building materials that such "regular dealers," as a class, do not deal fairly, and that such advertisements are calculated and designed to, and do, deceive the trade and general public.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 3, 4, and 5, and each and all of them are, under the circumstances therein set forth,



usually furnished to bona fide customers, the purpose being thereby to cause annoyance, delay, damage, and expense to such mail-order competitors and to obtain information respecting their business which could not have been secured had the purpose of the requests been disclosed:

*Held*, That such harassment constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that the St. Lawrence Lumber Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, St. Lawrence Lumber Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of South Dakota, having its principal office and place of business at the city of St. Lawrence, in said State, now and for more than one year last past engaged in the sale of lumber and building materials among the several States and Territories of the United States, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business, respondent purchases the lumber and building materials in the various States of the United States and the Territories thereof, and transports the same through other States and Territories in and to the town of St. Lawrence in the State of South Dakota, where they are sold and shipped to purchasers in different States and Territories of the United States; and there is continuously and has been at all times herein mentioned a constant current of trade and commerce in said lumber and building materials between and among the various States and

Territories of the United States and the District of Columbia and foreign countries, and especially from other States and Territories of the United States to and through the town of St. Lawrence, State of South Dakota, and from there to and through other States and Territories of the United States, the District of Columbia, and foreign countries.

PAR. 3. That a branch or form of retail lumber trade in the United States is carried on by so-called "mail-order houses," which sell, generally through the medium of mail orders, lumber and building materials, in interstate commerce, direct to the consumer in nearly all of the States of the United States; that such mail-order houses are either manufacturers of lumber or commercial establishments, located in many cities of the United States; that said commercial establishments generally purchase their supplies of lumber and lumber products from the manufacturer and wholesale dealer without the intervention of the retail dealer, and that said mail-order houses are engaged in competition with other persons, firms, copartnerships, and corporations who conduct retail lumber yards, for the sale at retail, of lumber and building materials.

PAR. 4. That the respondent for more than one year last past, with the purpose, intent, and effect of stifling and suppressing competition in the sale of lumber and building materials in interstate commerce, has systematically and on a large scale written and sent and caused to be written and sent, and procured others to write and send, to said mail-order houses, letters containing requests for statements of estimates of the quantity and quality of lumber or building material required for certain building purposes, and the prices therefor, and also containing requests for the printed matter, advertisements and other special information furnished bona fide customers and prospective customers by such mail order houses; that the writers and senders of such letters had no purpose or intention of buying any lumber or building material from such mail-order houses, but wrote and sent such letters to cause such mail-order houses annoyance and delay in the transaction of their business and damage and expense.

usually furnished to bona fide customers, the purpose being thereby to cause annoyance, delay, damage, and expense to such mail-order competitors and to obtain information respecting their business which could not have been secured had the purpose of the requests been disclosed:

*Held*, That such harassment constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that the St. Lawrence Lumber Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, St. Lawrence Lumber Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of South Dakota, having its principal office and place of business at the city of St. Lawrence, in said State, now and for more than one year last past engaged in the sale of lumber and building materials among the several States and Territories of the United States, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business, respondent purchases the lumber and building materials in the various States of the United States and the Territories thereof, and transports the same through other States and Territories in and to the town of St. Lawrence in the State of South Dakota, where they are sold and shipped to purchasers in different States and Territories of the United States; and there is continuously and has been at all times herein mentioned a constant current of trade and commerce in said lumber and building materials between and among the various States and

materials from the various States of the United States and the Territories thereof, and transports the same through other States and Territories in and to the town of St. Lawrence, State of South Dakota, where said lumber and building materials are sold to the consumer; that such lumber and building materials continuously move to the town of St. Lawrence, State of South Dakota, from the States and Territories of the United States, and there has been at all times hereinafter mentioned a constant current of trade and commerce in said lumber and building materials from other States and Territories of the United States and especially from other States and Territories to the town of St. Lawrence, State of South Dakota.

PAR. 3. That a branch or form of retail lumber trade in the United States is, and for many years has been, carried on by so-called "mail-order houses," which sell, generally through the medium of mail orders, lumber and building materials, in interstate commerce direct to the consumer in nearly all of the States of the United States; that such mail-order houses are either manufacturers of lumber or commercial establishments; that said commercial houses generally purchase their supplies of lumber products from the manufacturer and wholesale dealer without the intervention of the retail dealer; and that said mail-order houses are engaged in competition with respondent, St. Lawrence Lumber Co., in the sale at retail of lumber and building materials.

PAR. 4. That the respondent, St. Lawrence Lumber Co., with the purpose, intent, and effect of forcing the ultimate consumer to buy his required supplies of lumber and building materials from the respondent, St. Lawrence Lumber Co., and thereby unfairly interfering with and preventing said mail-order houses from dealing directly with the consumer, and also thereby unfairly interfering with and preventing customers from purchasing the required supplies of lumber and building materials from said mail-order houses, for more than one year last past has systematically and on a large scale, written and sent, and caused to be written and sent, and procured others to write and send to said mail-order houses, letters containing requests for statements of estimates of the quality and quantity of lumber and build-

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, St. Lawrence Lumber Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and fully stating its charges in that respect, and the above-named respondent, St. Lawrence Lumber Co., having made and filed its answer to the said complaint, admitting certain of the matters alleged and set forth in said complaint, and denying others therein contained, and having signed and filed an agreed statement of facts, wherein it is stipulated and agreed that the Commission shall forthwith proceed upon such agreed statement of facts to make and enter its order disposing of this proceeding without the introduction of testimony in support of the same, the respondent, St. Lawrence Lumber Co., forever waiving and relinquishing any and all right to the introduction of such testimony.

### FINDINGS AS TO THE FACTS.

**PAR. 1.** That the respondent, St. Lawrence Lumber Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of South Dakota, with its principal office and place of business located in the town of St. Lawrence, State of South Dakota, and that the respondent, St. Lawrence Lumber Co., is now, and has at all times hereinafter mentioned, engaged in the purchase of lumber and building materials in the various States of the United States and the Territories thereof, and in the sale of said lumber and building materials in the town of St. Lawrence and vicinity, State of South Dakota, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

**PAR. 2.** That in the conduct of its business, the respondent, St. Lawrence Lumber Co., purchases lumber and building

5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered*, That the respondent, St. Lawrence Lumber Co., town of St. Lawrence, State of South Dakota, and its agents, representatives, servants, and employees, forever cease and desist from—

Systematically or on a large scale or in bad faith or by subterfuge writing and sending, causing to be written and sent, or procuring others who are not bona fide customers or bona fide prospective customers of mail-order concerns, to write and send to mail-order concerns, requests for estimates of the kind, quality, and prices of lumber and building material for certain building purposes and for catalogues, printed matter, and special information intended only for bona fide customers and bona fide prospective customers; provided, that nothing herein contained shall be taken to prohibit such requests where disclosure is made by the parties making them of their connection with or their acting for respondent.

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FEDERAL TRADE COMMISSION *v.* STEWART,  
DICKSON & CO. (INC.).

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 5 OF THE ACT OF CONGRESS, APPROVED SEPTEMBER 26,  
1914.

Docket No. 234.—February 20, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of engine packing gave and offered to give to employees of its customers and of competitors' customers, in some instances without the knowledge and consent of their employers, sums of money, as an inducement for them to influence their employers to purchase its goods or to refrain from dealing with its competitors:

*Held*, That such payments and offers to pay, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Stewart, Dickson & Co. (Inc.), hereinafter referred to as respondent, has been, for more than a year last past, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Stewart, Dickson & Co. (Inc.), is a corporation, organized and existing and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business at the city of New York, in said State, and is now and for more than one year last past has been engaged in manufacturing and selling engine packings composed of asbestos, flax, and kindred products, throughout the States and Territories of the United States, and that at all times hereinafter mentioned, the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That in the course of its business of manufacturing and selling engine packings composed of asbestos, flax, and kindred products throughout the States and Territories of the United States, the respondent, for more than one year last past, has been, secretly paying and offering to pay, to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge and consent of their employers, sums of money as an inducement to influence their said employers to purchase or contract to purchase from the respondent, engine packings composed of asbestos, flax, and kindred products, or to influence such customers to refrain from dealing, or contracting to deal with competitors of respondent.

**REPORT, FINDINGS AS TO THE FACTS, AND ORDER.**

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, Stewart, Dickson & Co. (Inc.), has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in this respect and the respondent having entered its appearance by George P. Fall, Esq., its attorney, and having filed its answer admitting that the matters and things alleged in the said complaint are true in the manner and form therein set forth, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to facts, and its order disposing of this proceeding without the introduction of testimony in support of the same and waiving any and all right to the introduction of such testimony, the Commission makes this report and findings as to the facts and conclusions:

**FINDINGS AS TO THE FACTS.**

**PARAGRAPH 1.** That the respondent, Stewart, Dickson & Co. (Inc.), is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its home office located at the city of New York, in said State of New York, now and for more than one year last past engaged in the business of manufacturing and selling engine packings composed of asbestos, flax, and kindred products generally in commerce throughout the States and Territories of the United States in direct competition with other persons, firms, copartnerships and corporations manufacturing and selling like products.

**PAR. 2.** That for more than one year last the respondent has been secretly paying and offering to pay to employees of both its customers and prospective customers and its com-



petitors' customers and prospective customers without the knowledge and consent of their employers, as an inducement to influence their said employers to purchase or to contract to purchase from the respondent, engine packings, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, sums of money.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to facts in paragraph 2, and each and all of them, are under the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent having entered its appearance by George P. Fall, its attorney, and having filed its answer admitting that the matters and things alleged and contained in the said complaint are true in the manner and form therein set forth and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all rights to the introduction of such testimony and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered*, That the respondent, Stewart, Dickson & Co. (Inc.), and its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly—

Paying or offering to pay employees of its customers or prospective customers or those of its competitors' customers or prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent packings for engines, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, money.

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**FEDERAL TRADE COMMISSION v. THE WHOLESALE SADDLERY ASSOCIATION OF THE UNITED STATES AND NATIONAL HARNESS MANUFACTURERS' ASSOCIATION OF THE UNITED STATES.**

**COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.**

**Docket No. 16.—February 25, 1919.**

**SYLLABUS.**

1. Where the members of an unincorporated association engaged in the distribution and sale of harness and saddlery goods at wholesale—
  - (a) Agreed with each other to prevent retailers in harness and saddlery from purchasing their requirements from manufacturers and to compel them to purchase from the members of the said association instead;
  - (b) Induced the members of the Manufacturers' Association first to become associate members of the Wholesale Association and to join with them in preventing manufacturers from selling to retailers, and later to unite with them in preventing such sales, though they had ceased to be associate members of the Wholesale Association;
  - (c) Actually prevented or induced manufacturers to refuse to sell to retailers who had previously been competitors of the wholesalers by reason of doing both a wholesale and retail business;
  - (d) Declined to admit to membership in the Wholesale Association jobbers or wholesalers who did any retail business, and prevented and endeavored to prevent manufacturers from selling to such jobbers, though allowing its own members at times to do a retail business;
  - (e) Procured the manufacturers to accept the lists of jobbers prepared by the Wholesale Association as showing the jobbers en-

titled to purchase direct from manufacturers, and secured the removal from lists of jobbers published by trade papers of the names of such jobbers as the Wholesale Association considered not to be entitled to purchase from manufacturers;

- (f) Notified manufacturers that certain jobbers were not entitled to purchase from manufacturers;
  - (g) Notified its members of manufacturers who sold to wholesalers contrary to the wishes of the association, with the result that the members of the association withheld their patronage from such manufacturers, and manufacturers declined to sell to jobbers not approved by the association through fear of loss of patronage of the association members;
  - (h) Sought to prevent manufacturers from making direct shipments to retailers on the order of jobbers and from making freight allowances to jobbers on such shipments, by withdrawing their patronage from such manufacturers as made such shipments;
2. Where an unincorporated association of retail harness dealers (engaged also to some extent in manufacturing)—
- (a) Influenced the members of the Wholesale Association above referred to to prevent manufacturers from selling concerns which did a combined wholesale and retail business;
  - (b) Actively cooperated with the Wholesale Association to establish the principle that a combined or closely affiliated wholesale and retail business was not entitled to purchase from manufacturers;
  - (c) Advised the secretary of the Wholesale Association of wholesalers selling in competition with retailers;
  - (d) Used its influence with the Wholesale Association to prevent the latter from admitting to membership, and therefore to the privilege of purchasing from manufacturers, certain concerns not regarded as wholesalers;
  - (e) Procured the members of the Wholesale Association to refuse to sell to mail-order houses, general stores, hardware concerns, and other competitors of the retail harness dealers;
  - (f) Refused associate membership to wholesalers who sold to mail-order houses;
  - (g) Admitted to associate membership manufacturers who refused to sell mail-order houses and were otherwise in harmony with the association, issued credentials to the salesmen of such associate members, and systematically urged members to withhold patronage from concerns whose salesmen were not equipped with such credentials;
  - (h) Induced members of the Wholesale Association to use their influence with manufacturers to prevent them from selling to mail-order houses;

**Held,** That such acts constituted unfair methods of competition in violation of section 5 of the act of September 23, 1914.

## COMPLAINT.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the officers, executive committee, and members of the Wholesale Saddlery Association of the United States, and the officers, executive committee, and parties affiliated with the National Harness Manufacturers' Association of the United States, all hereinafter referred to, and who are respondents herein, have been, and are, using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be in the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

## I.

PARAGRAPH 1. That the Wholesale Saddlery Association of the United States is a voluntary, unincorporated association, having its headquarters and principal place of business in the city of Chicago, Ill.; that said association is composed of individuals, copartnerships, and corporations, located in many of the States of the United States; that the members of said association are engaged in the distribution and sale of harness and saddlery goods in interstate commerce at wholesale through sales to retailers located in various States of the United States, including retailers who are affiliated with the National Harness Manufacturers' Association of the United States, hereinafter referred to; that the members of said Wholesale Saddlery Association purchase raw material and many completed articles in interstate commerce from manufacturers of saddlery accessories located in various States of the United States; and that said Wholesale Saddlery Association comprises in its membership the greater part of the wholesale saddlery trade of the United States.

PAR. 2. That the respective officers of the Wholesale Saddlery Association of the United States and their respective places of residence are as follows, to wit:

(1) J. W. Gaver, St. Paul, Minn., president; (2) J. T. Palmatory, Richmond, Va., vice president; (3) Albert Kuhlmeier, Chicago, Ill., treasurer; (4) Henry Othmer, Chicago, Ill., secretary-commissioner.

That the executive committee of the Wholesale Saddlery Association of the United States is composed of individuals in addition to the president, vice president, and treasurer above mentioned, named with their respective places of residence, as follows:

(5) J. C. Harpham, Lincoln, Nebr.; (6) E. A. Hendrickson, Indianapolis, Ind.; (7) J. D. Padgitt, Dallas, Tex.; (8) W. F. Davis, San Francisco, Calif.

That the members of the Wholesale Saddlery Association of the United States comprise individuals, copartnerships, and corporations, named with the respective places of their principal offices or places of business, as follows:

(9) J. F. Parkhurst & Son Co., Bangor, Me.; (10) Ranno-Speirs Co., Boston, Mass.; (11) Henry C. Stoehr & Co., Boston, Mass.; (12) T. J. Regnier, Springfield, Mass.; (13) L. A. Hastings Co., Worcester, Mass.; (14) Smith Worthington Co., Hartford, Conn.; (15) Lerch Bros., Baltimore, Md.; (16) Woodward Co., Albany, N. Y.; (17) Bath Harness Co., Bath, N. Y.; (18) Dorries & Co., Buffalo, N. Y.; (19) John C. Sheely, Elmira, N. Y.; (20) Henry Aschenbach Harness Co., New York, N. Y.; (21) Hill & Langstroth, New York, N. Y.; (22) Smith Worthington Co., New York, N. Y.; (23) Edward Barnard Co., Rome, N. Y.; (24) Bingham Harness Co., Rome, N. Y.; (25) Olmstead Co., Syracuse, N. Y.; (26) George Windheim, Utica, N. Y.; (27) W. W. Glackner & Sons Co., Canton, Pa.; (28) Muntz-Wright Co., Greenville, Pa.; (29) Robinsteen Collar & Leather Co., Indiana, Pa.; (30) Kennedy, Willing & Co., Philadelphia, Pa.; (31) Lyle Bros., Pittsburgh, Pa.; (32) G. W. Fritz Co., Scranton, Pa.; (33) Acme Harness Co., Titusville, Pa.; (34) H. B. Beard & Co., York, Pa.; (35) H. E. Dusman, York, Pa.; (36) Frey Bros., Wilkes-Barre, Pa.; (37) Julius J. Bantlin Co., Cincinnati, Ohio; (38) Graf-Morsbach Co., Cincinnati, Ohio; (39) Langenbrunner & Co., Cincinnati, Ohio; (40) Perkins-Campbell Co., Cincinnati, Ohio; (41) J. H. & F. A. Sells Co., Columbus, Ohio; (42) R. Given & Son Co., Sidney,

Ohio; (43) Lyttle & Weeman Co., Toledo, Ohio; (44) Peter Sattler Co., Toledo, Ohio; (45) Armstrong & Graham, Detroit, Mich.; (46) Naylon-Pierson-Hough Co., Detroit, Mich.; (47) Veit & Perry, Flint, Mich.; (48) Brown & Sehler Co., Grand Rapids, Mich.; (49) H. Kellogg, Hudson, Mich.; (50) Morley Bros., Saginaw, Mich.; (51) Fort Wayne Saddlery Co., Fort Wayne, Ind.; (52) Indianapolis Saddlery Co., Indianapolis, Ind.; (53) Martin Rehfuess, jr., Indianapolis, Ind.; (54) J. J. Harrington, Richmond, Ind.; (55) Froeb Bros. Co., Terre Haute, Ind.; (56) A. D. Jackson Saddlery Co., Benton, Ill.; (57) Biehl & Sifferman, Chicago, Ill.; (58) A. N. Edwards, Chicago, Ill.; (59) Charles Kronauer & Co., Chicago, Ill.; (60) Rinehart Harness Co., Chicago, Ill.; (61) Bowler & Jones, Freeport, Ill.; (62) Adams & Johnson Co., Galesburg, Ill.; (63) Chuse & Co., Peoria, Ill.; (64) Case & Kroenlein, Peoria, Ill.; (65) J. B. Schott Saddlery & Manufacturing Co., Quincy, Ill.; (66) Wolf Manufacturing Co., Quincy, Ill.; (67) Hess & Hopkins Leather Co., Rockford, Ill.; (68) Schwahyn-Seyberth Saddlery Co., Eau Claire, Wis.; (69) J. M. Franssens, Green Bay, Wis.; (70) McIntyre-Burrall Co., Green Bay, Wis.; (71) John C. Nichols Harness Manufacturing Co., Janesville, Wis.; (72) Dyer Saddlery Co., Milwaukee, Wis.; (73) Wallace & Smith Co., Milwaukee, Wis.; (74) Benjamin Young Co., Milwaukee, Wis.; (75) Madison Saddlery Co., Madison, Wis.; (76) S. R. & I. C. McConnell Co., Burlington, Iowa; (77) L. & H. Goepfinger, Boone, Iowa; (78) Clinton Saddlery Co., Clinton, Iowa; (79) Walter Boyt Saddlery Co., Des Moines, Iowa; (80) Des Moines Saddlery Co., Des Moines, Iowa; (81) Sears Saddlery Co., Davenport, Iowa; (82) Paul Hoffmann, Dubuque, Iowa; (83) Van Nostrand Saddlery Co., Muscatine, Iowa; (84) R. F. & W. B. Fitch Co., Oskaloosa, Iowa; (85) Meyer Bros. Saddlery Co., Sioux City, Iowa; (86) Waterloo Saddlery Co., Waterloo, Iowa; (87) Blair Horse Collar Co., Blair, Nebr.; (88) J. H. Haney & Co., Hastings, Nebr.; (89) Harpham Bros. Co., Lincoln, Nebr.; (90) J. H. Haney & Co., Omaha, Nebr.; (91) Marks Bros. Saddlery Co., Omaha, Nebr.; (92) Atchison Saddlery Co., Atchison, Kans.; (93) Kessler-Barkow Saddlery Co., Atchison, Kans.; (94) Glunz Saddlery Co., Fort Scott, Kans.; (95) Acken-

hausen Saddlery Co., Leavenworth, Kans.; (96) O. Krauss & Sons, Topeka, Kans.; (97) L. Hays, Wichita, Kans.; (98) McComb Bros., Wichita, Kans.; (99) William Heck, California, Mo.; (100) Kansas City Saddlery Co., Kansas City, Mo.; (101) Askew Saddlery Co., Kansas City, Mo.; (102) James Clark Leather Co., St. Louis, Mo.; (103) A. Holthaus Saddlery Co., St. Louis, Mo.; (104) J. B. Sickles Saddlery Co., St. Louis, Mo.; (105) Strauss Saddlery Co., St. Louis, Mo.; (106) Rossi Saddlery Co., St. Joseph, Mo.; (107) Wyeth Hardware & Manufacturing Co., St. Joseph, Mo.; (108) Herrmann-Sanford Saddlery Co., Springfield, Mo.; (109) Steineger Saddlery Co., Springfield, Mo.; (110) Dodson, Fisher, Brockmann Co., Minneapolis, Minn.; (111) G. D. Noe Manufacturing Co., Minneapolis, Minn.; (112) Charles Friend & Son, St. Paul, Minn.; (113) P. R. L. Hardenbergh & Co., St. Paul, Minn.; (114) Scheffer & Rossum Co., St. Paul, Minn.; (115) Minnesota Harness Factory, Winona, Minn.; (116) Bristol & Sweet Harness Co., Fargo, N. Dak.; (117) North Dakota Harness Co., Fargo, N. Dak.; (118) Mitchell Harness Co., Mitchell, S. Dak.; (119) W. J. Murphy, Fort Smith, Ark.; (120) Voss Barbee Manufacturing Co., Little Rock, Ark.; (121) Dodson Saddlery Co., Dallas, Tex.; (122) Padgitt Bros. Co., Dallas, Tex.; (123) G. H. Schoellkopf Saddlery Co., Dallas, Tex.; (124) Tenison Bros. Saddlery Co., Dallas, Tex.; (125) Texas Saddlery Co., Fort Worth, Tex.; (126) Straus-Bodenheimer Saddlery Co., Houston, Tex.; (127) Paris Saddlery Co., Paris, Tex.; (128) L. Frank Saddlery Co., San Antonio, Tex.; (129) Tom Padgitt Co., Waco, Tex.; (130) Hughes-Bozarth-Anderson Co., Oklahoma City, Okla.; (131) Louis P. Rice & Co., New Orleans, La.; (132) Whitney & Sloo Co. (Ltd.), New Orleans, La.; (133) Shreveport Saddlery Co., Shreveport, La.; (134) Forman-Breen Manufacturing Co., Louisville, Ky.; (135) Harbison & Gathright, Louisville, Ky.; (136) Hodapp & Miller, Louisville, Ky.; (137) Southern Saddlery Co., Chattanooga, Tenn.; (138) Nashville Saddlery Co., Nashville, Tenn.; (139) Orman-Partee Saddlery Co., Nashville, Tenn.; (140) Bona Allen, Buford, Ga.; (141) Shadburn Bros., Buford, Ga.; (142) G. Bernd Co., Macon, Ga.; (143) Leo Frank, Savannah, Ga.; (144) T. T. Hutchisson & Co., Wheeling, W.

Va.; (145) Cottrell Saddlery Co., Richmond, Va.; (146) Los Angeles Saddlery & Finding Co., Los Angeles, Calif.; (147) A. A. Van Voorhis & Co., Sacramento, Calif.; (148) W. Davis & Sons, San Francisco, Calif.; (149) F. S. Johnson Co., San Francisco, Calif.; (150) Keystone Bros., San Francisco, Calif.; (151) W. H. Schaffer, Stockton, Calif.; (152) J. H. Wilson Saddlery Co., Denver, Colo.; (153) J. G. Read & Bros. Co., Ogden, Utah; (154) Salt Lake Hardware Co., Salt Lake City, Utah; (155) Breyman Leather Co., Portland, Oreg.; (156) John Clark Saddlery Co., Portland, Oreg.; (157) P. J. Cronin Co., Portland, Oreg.; (158) Geo. Lawrence Co., Portland, Oreg.; (159) Duncan & Sons, Seattle, Wash.

PAR. 3. That the National Harness Manufacturers' Association of the United States is a voluntary, unincorporated association, having its headquarters and principal place of business in the city of Cincinnati, Ohio; that said association is a federated body composed largely of city and district associations located in many of the cities and States of the United States; that these subsidiary or affiliated associations are composed of individuals, copartnerships, and corporations engaged in the manufacture and sale of harness and saddlery goods at retail; that the members of these subsidiary or affiliated associations purchase their supplies of harness and saddlery goods largely from wholesalers and jobbers in interstate commerce, including members of the Wholesale Saddlery Association of the United States.

PAR. 4. That the respective officers of the National Harness Manufacturers' Association of the United States, and their respective places of residence, are as follows:

(160) E. L. Richards, Sheldon, Iowa, president; (161) E. F. Krallman, St. Louis, Mo., vice president; (162) D. A. Hopkins, Grinnell, Iowa, treasurer; (163) C. M. Sherz, Cincinnati, Ohio, secretary.

That the executive committee of the National Harness Manufacturers' Association of the United States is composed of individuals named with their respective places of residence as follows: (164) Henry Groth, Milwaukee, Wis., chairman; (165) Frank C. Fischer, Milwaukee, Wis.; (166) A. G. Bade, Chicago, Ill.; (167) Henry Marquart, Chicago, Ill.



That the members of the National Harness Manufacturers' Association of the United States consist largely of a number of city and district associations, including, in addition to some not now known to the Commission, the following, to wit:

(168) New England Retail Harness Manufacturers' Association; (169) Southwestern Retail Harness Saddlery Association; (170) Minnesota Retail Harness Manufacturers' Association; (171) Western Retail Harness Manufacturers' Association; (172) Northwestern Harness & Saddlery Manufacturers' Association; (173) St. Louis & Vicinity Retail Harness Manufacturers' Association; (174) Tri-State Harness Manufacturers' Association; (175) Wisconsin Retail Harness Manufacturers' Association; (176) Fox River Valley Retail Harness Manufacturers' Association; (177) Milwaukee Retail Harness Manufacturers' Association; (178) Central Illinois Retail Harness Manufacturers' Association; (179) New York State Retail Harness Manufacturers' Association; (180) Rochester (N. Y.) Retail Harness Manufacturers' Association; (181) Greater New York Harness Manufacturers' Association; (182) Philadelphia Retail Harness Makers' Association; (183) Nebraska Retail Harness Manufacturers' Association; (184) South Dakota Retail Harness Manufacturers' Association; (185) Iowa Retail Harness Manufacturers' Association; (186) Michigan State Retail Harness Manufacturers' Association; (187) Chicago Retail Harness Manufacturers' Association.

That the membership of the foregoing associations composing the National Harness Manufacturers' Association of the United States consists of a very large number of individuals, copartnerships, and corporations at present unknown to the Commission, located in numerous towns and cities of the United States.

PAR. 5. That the respondent officers, executive committee, and members of the Wholesale Saddlery Association of the United States, are, and for more than two years last past, have been wrongfully and unlawfully engaged in a combination or conspiracy among themselves, entered into, carried out, and continued with the intent, purpose, and effect of discouraging, stifling and suppressing competition in inter-

state commerce in the wholesale harness and saddlery trade of the United States, and of unfairly hampering and obstructing certain competitors, who are not members of said Wholesale Saddlery Association, engaged in interstate commerce, by inducing and compelling manufacturers of saddlery accessories to refuse to recognize such competitors as legitimate jobbers or wholesalers entitled to buy from manufacturers at jobbers' or wholesalers' prices and terms, and for that reason to refuse to sell them as such in interstate commerce, thus forcing them to buy from members of the Wholesale Saddlery Association of the United States, and at prices higher than those made by manufacturers to so-called legitimate or regular jobbers.

PAR. 6. That the aforesaid combination and conspiracy to induce and compel manufacturers of saddlery accessories to refuse competitors recognition as legitimate jobbers or wholesalers and to refuse to sell them as such, have been effected and carried out by various means, among them the following, to wit:

(a) By the establishment of jobbers' legitimacy tests based on eligibility to membership in the Wholesale Saddlery Association of the United States.

(b) By the compilation, censorship, and distribution of lists of so-called legitimate jobbers.

(c) By verbal and written notices to manufacturers of saddlery accessories that certain individuals, copartnerships, and corporations not eligible to membership in the Wholesale Saddlery Association were not entitled to recognition as so-called regular or legitimate jobbers.

(d) By reporting to members of the Wholesale Saddlery Association the names of accessory manufacturers not in harmony with the policy of the said association.

(e) By a systematic and long-continued encouragement of the withdrawal of patronage by members of the Wholesale Saddlery Association of the United States from accessory manufacturers reported as not in harmony with the policy of the said association.

PAR. 7. That the respondent officers, executive committee, and members of the Wholesale Saddlery Association of the United States are, and for more than two years last past

have been, wrongfully and unlawfully engaged in a combination and conspiracy among themselves to induce and compel accessory manufacturers to refuse to make shipments direct to the retailer on the jobber's order or to refuse any freight allowance on such shipments if made; that the purpose and effect of said combination and conspiracy have been unfairly to hamper and obstruct the interstate commerce of competitors of said members of the Wholesale Saddlery Association of the United States and to restrict the entrance of new competitors into the jobbing field; and that in furtherance of said combination and conspiracy the respondent members of the Wholesale Saddlery Association of the United States have concertedly favored with their patronage accessory manufacturers who do not make such direct shipments or who do not make freight allowance therefor.

## II.

PAR. 8. That the respondent officers, executive committee, and members of the Wholesale Saddlery Association of the United States are, and for more than two years last past have been, wrongfully and unlawfully engaged in a combination and conspiracy with the officers and executive committee of the National Harness Manufacturers' Association of the United States and with members of its subsidiary or affiliated associations to stifle and suppress the competition and unfairly hamper and obstruct the business of individuals, copartnerships, and corporations doing or endeavoring to do a combined or closely affiliated wholesale and retail business in harness and saddlery goods in interstate commerce by inducing and compelling manufacturers of saddlery accessories to refuse to recognize such competitors as legitimate jobbers entitled to buy from manufacturers at jobbers' prices or terms, and for that reason to refuse to sell to them in interstate commerce, unless they are members of the Wholesale Saddlery Association of the United States, many of whose members have long done and continue to do a combined wholesale and retail business.

PAR. 9. That the aforesaid combination and conspiracy have been carried on and are evidenced by verbal and

written communications, by resolutions adopted at regular annual conventions, by amendment of the constitutional requirements for eligibility to membership in the Wholesale Saddlery Association of the United States to conform to one of the constitutional requirements for associate membership in the National Harness Manufacturers' Association of the United States, and by the active cooperation of the officers, committee, and members of the aforesaid associations.

PAR. 10. That pursuant to and in furtherance of the aforesaid combination and conspiracy the respondent officers, executive committee, and members of the Wholesale Saddlery Association of the United States have employed various means, among them being all of those heretofore set out in paragraph 6 of this complaint.

### III.

PAR. 11. That the respondent officers and executive committee of the National Harness Manufacturers' Association and the members of its subsidiary or affiliated associations are, and have been for more than two years last past, engaged in a combination or conspiracy among themselves, entered into, carried out, and continued with the intent, purpose, and effect of discouraging, stifling, and suppressing the competition and of unfairly and unlawfully hampering and obstructing the business of competitors by inducing and compelling manufacturers and jobbers not to sell such competitors in interstate commerce, and that among the competitors thus unfairly and unlawfully hampered and obstructed are mail-order houses engaged in selling saddlery goods at retail in interstate commerce, and general stores, hardware stores, etc., purchasing their supplies of saddlery goods in interstate commerce.

PAR. 12. That pursuant to and in furtherance of the aforesaid combination and conspiracy the respondent officers and executive committee of the National Harness Manufacturers' Association and the members of its subsidiary or affiliated associations have induced or compelled accessory manufacturers and jobbers to refuse to sell the aforesaid competitors through the use of various means, among them the following, to wit:

(a) The establishment of an associate membership in the National Harness Manufacturers' Association of the United States restricted to manufacturers and jobbers who do not retail or sell to mail-order houses and who are otherwise in harmony with the policy of the said association.

(b) The issuance of credentials to such associate members for the use of their traveling salesmen.

(c) The systematic encouragement among affiliated retailers of a policy of confining or preferring their patronage to manufacturers and jobbers whose salesmen are equipped with such credentials.

PAR. 18. That pursuant to and in furtherance of the said combination and conspiracy the respondent officers and executive committee of the National Harness Manufacturers' Association of the United States and the members of its subsidiary or affiliated associations have induced the members of the Wholesale Saddlery Association of the United States to use their influence with accessory manufacturers not to sell to the aforesaid competitors of retailers affiliated with the National Harness Manufacturers' Association of the United States.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondents, the Wholesale Saddlery Association of the United States and National Harness Manufacturers' Association of the United States, have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect thereof would be to the interest of the public, and fully stating its charges in that respect, and the respondents having entered their appearances by Sims, Welch, and Godman and by Lorbach and Garver, respectively, their attorneys, and having duly filed their answers admitting certain of the allegations of

said complaint and denying certain others thereof, and the Commission having introduced testimony in support of the charges in the said complaint and the respondent, the Wholesale Saddlery Association of the United States having rested its case at the close of the Commission's case, and the respondent, National Harness Manufacturers' Association of the United States having introduced certain evidence in support of its answer to the said complaint, and counsel for both parties having filed their briefs and the Commission having heard the argument of counsel on the merits of the case and having duly considered the record, and being fully advised in the premises, now makes this its report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the Wholesale Saddlery Association of the United States, is now and was for more than two years prior to the first day of August, 1917, a voluntary unincorporated association, with its principal office and place of business located at the city of Chicago, State of Illinois.

PAR. 2. That the membership of said association comprised the greater part of the wholesale saddlery trade of the United States and was at all times hereinafter mentioned, composed of persons, firms, copartnerships, and corporations located in various States of the United States, engaged in the business of distributing and selling at wholesale, harness and saddlery goods in interstate commerce throughout the various States and Territories of the United States, to retail dealers, both members and nonmembers of the National Harness Manufacturers' Association of the United States, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged; that in the conduct of their business the members of said association purchase raw material and completed articles in interstate commerce from manufacturers of saddlery accessories, located in different States of the United States.

PAR. 3. That on August 1, 1917, the respective officers of the Wholesale Saddlery Association of the United States, and their respective places of residence were as follows, to wit:

J. W. Gaver, St. Paul, Minn., president; J. T. Palmatory, Richmond, Va., vice president; Albert Kuhlmeier, Chicago, Ill., treasurer; Henry Othmer, Chicago, Ill., secretary-commissioner.

PAR. 4. That on August 1, 1917, the executive committee of said association was composed of individuals, in addition to the president, vice president, and treasurer mentioned and described in the preceding paragraph herein, named with their respective places of residence as follows, to wit:

J. C. Harpham, Lincoln, Nebr.; E. A. Hendrickson, Indianapolis, Ind.; J. D. Padgitt, Dallas, Tex.; W. F. Davis, San Francisco, Calif.

PAR. 5. That during the year prior to the first day of August, 1917, the membership of said association was composed of certain persons, firms, copartnerships, and corporations whose names and respective principal offices and places of business are as follows, to wit:

J. F. Parkhurst & Son Co., Bangor, Me.; Ranno-Speirs Co., Boston, Mass.; Henry C. Stoehr & Co., Boston, Mass.; T. J. Regnier, Springfield, Mass.; L. A. Hastings Co., Worcester, Mass.; Smith Worthington Co., Hartford, Conn.; Lerch Bros., Baltimore, Md.; Woodward Co., Albany, N. Y.; Bath Harness Co., Bath, N. Y.; Dorries & Co., Buffalo, N. Y.; John C. Sheely, Elmira, N. Y.; Henry Aschenbach Harness Co., New York, N. Y.; Hill & Langstroth, New York, N. Y.; Smith Worthington Co., New York, N. Y.; Edward Barnard Co., Rome, N. Y.; Bingham Harness Co., Rome, N. Y.; Olmstead Co., Syracuse, N. Y.; George Windheim, Utica, N. Y.; W. W. Glackner & Sons Co., Canton, Pa.; Muntz-Wright Co., Greenville, Pa.; Robinsteen Collar & Leather Co., Indiana, Pa.; Kennedy Willing & Co., Philadelphia, Pa.; Lyle Bros., Pittsburgh, Pa.; G. W. Fritz Co., Scranton, Pa.; Acme Harness Co., Titusville, Pa.; H. B. Beard & Co., York, Pa.; H. E. Dusman, York, Pa.; Frey Bros., Wilkes-Barre, Pa.; Julius J. Bantlin Co., Cincinnati, Ohio; Graf-Morsbach Co., Cincinnati, Ohio; Langenbrunner & Co., Cincinnati, Ohio; J. H. & F. A. Sells Co., Columbus, Ohio; Perkins-Campbell Co., Cincinnati, Ohio; R. Given & Son Co., Sidney, Ohio; Lyttle & Weeman Co., Toledo, Ohio; Peter Sattler Co., Toledo, Ohio; Armstrong & Graham,

Detroit, Mich.; Naylor-Pierson-Hough Co., Detroit, Mich.; Veit & Ferry, Flint, Mich.; Brown & Sehler Co., Grand Rapids, Mich.; H. Kellogg, Hudson, Mich.; Morley Bros., Saginaw, Mich.; Fort Wayne Saddlery Co., Fort Wayne, Ind.; Indianapolis Saddlery Co., Indianapolis, Ind.; Martin Rehfuß, jr., Indianapolis, Ind.; J. J. Harrington, Richmond, Ind.; Froeb Bros. Co., Terre Haute, Ind.; A. D. Jackson Saddlery Co., Benton, Ill.; Biehl & Sifferman, Chicago, Ill.; A. N. Edwards, Chicago, Ill.; Charles Kronauer & Co., Chicago, Ill.; Rinehart Harness Co., Santa Rosa, Calif.; Bowler & Jones, Freeport, Ill.; Adams & Johnson Co., Galesburg, Ill.; Chuse & Co., Peoria, Ill.; Case & Kroenlein, Peoria, Ill.; J. B. Schott Saddlery & Manufacturing Co., Quincy, Ill.; Wolf Manufacturing Co., Quincy, Ill.; Hess & Hopkins Leather Co., Rockford, Ill.; Schwahyn-Seyberth Saddlery Co., Eau Claire, Wis.; J. M. Franssens, Green Bay, Wis.; McIntyre-Burrell Co., Green Bay, Wis.; John C. Nichols Harness Manufacturing Co., Sheboygan, Wis.; Dyer Saddlery Co., Milwaukee, Wis.; Wallace & Smith Co., Milwaukee, Wis.; Benjamin Young Co., Milwaukee, Wis.; Madison Saddlery Co., Madison, Wis.; S. R. & I. C. McConnell Co., Burlington, Iowa; L. & H. Goepfinger, Boone, Iowa; Clinton Saddlery Co., Clinton, Iowa; Walter Boyt Saddlery Co., Des Moines, Iowa; Des Moines Saddlery Co., Des Moines, Iowa; Sears Saddlery Co., Davenport, Iowa; Paul Hoffmann, Dubuque, Iowa; Van Nostrand Saddlery Co., Muscatine, Iowa; R. F. & W. B. Fitch Co., Oskaloosa, Iowa; Meyer Bros. Saddlery Co., Sioux City, Iowa; Waterloo Saddlery Co., Waterloo, Iowa; Blair Horse Collar Co., Blair, Nebr.; J. H. Haney & Co., Hastings, Nebr.; Harpham Bros. Co., Lincoln, Nebr.; J. H. Haney & Co., Omaha, Nebr.; Marks Bros. Saddlery Co., Omaha, Nebr.; Atchison Saddlery Co., Atchison, Kans.; Kessler-Barkow Saddlery Co., Atchison, Kans.; Glunz Saddlery Co., Fort Scott, Kans.; Ackenhausen Saddlery Co., Leavenworth, Kans.; O. Krauss & Sons, Topeka, Kans.; L. Hays, Wichita, Kans.; McComb Bros., Wichita, Kans.; William Heck, California, Mo.; Kansas City Saddlery Co., Kansas City, Mo.; Askew Saddlery Co., Kansas City, Mo.; James Clark Leather Co., St. Louis, Mo.; A. Holthaus Saddlery Co., St. Louis, Mo.; J. B. Sickles Saddlery Co., St.



Louis, Mo.; Straus Saddlery Co., St. Louis, Mo.; Rossi Saddlery Co., St. Joseph, Mo.; Wyeth Hardware & Manufacturing Co., St. Joseph, Mo.; Hermann-Sanford Saddlery Co., Springfield, Mo.; Steineger Saddlery Co., Springfield, Mo.; Dodson, Fisher, Brockmann Co., Minneapolis, Minn.; Charles Friend & Son, St. Paul, Minn.; P. R. L. Hardenbergh & Co., St. Paul, Minn.; Scheffer & Rossum Co., St. Paul, Minn.; Minnesota Harness Factory, Winona, Minn.; Bristol & Sweet Harness Co., Fargo, N. Dak.; North Dakota Harness Co., Fargo, N. Dak.; Mitchell Harness Co., Mitchell, S. Dak.; W. J. Murphy, Fort Smith, Ark.; G. D. Noe Manufacturing Co., Minneapolis, Minn.; Voss Barbee Manufacturing Co., Little Rock, Ark.; Dodson Saddlery Co., Dallas, Tex.; Padgitt Bros. Co., Dallas, Tex.; G. H. Schoellkopf Saddlery Co., Dallas, Tex.; Tenison Bros. Saddlery Co., Dallas, Tex.; Texas Saddlery Co., Fort Worth, Tex.; Straus-Bodenheimer Saddlery Co., Houston, Tex.; Paris Saddlery Co., Paris, Tex.; L. Frank Saddlery Co., San Antonio, Tex.; Tom Padgitt Co., Waco, Tex.; Hughes-Bozarth-Anderson Co., Oklahoma City, Okla.; Louis P. Rice & Co., New Orleans, La.; Whitney & Sloo Co. (Ltd.), New Orleans, La.; Shreveport Saddlery Co., Shreveport, La.; Forman-Breen Manufacturing Co., Louisville, Ky.; Harbison & Gathright, Louisville, Ky.; Hodapp & Miller, Louisville, Ky.; Southern Saddlery Co., Chattanooga, Tenn.; Nashville Saddlery Co., Nashville, Tenn.; Orman-Partee Saddlery Co., Nashville, Tenn.; Bona Allen (Inc.), Buford, Ga.; Shadburn Bros., Buford, Ga.; G. Bernd Co., Macon, Ga.; Leo Frank, Savannah, Ga.; T. T. Hutchisson & Co., Wheeling, W. Va.; Cottrell Saddlery Co., Richmond, Va.; Los Angeles Saddlery & Finding Co., Los Angeles, Calif.; A. A. Van Voorhies & Co., Sacramento, Calif.; W. Davis & Son, San Francisco, Calif.; F. S. Johnson Co., San Francisco, Calif.; Keystone Bros., San Francisco, Calif.; W. H. Schaffer, Stockton, Calif.; J. H. Wilson Saddlery Co., Denver, Colo.; J. G. Read & Bros. Co., Ogden, Utah; Salt Lake Hardware Co., Salt Lake City, Utah; Breyman Leather Co., Portland, Oreg.; John Clark Saddlery Co., Portland, Oreg.; P. J. Cronin Co., Portland, Oreg.; George Lawrence Co., Portland, Oreg.; Duncan & Sons, Seattle, Wash.

PAR. 6. That on August 1, 1917, and for more than two years prior thereto, the National Harness Manufacturers' Association of the United States, was and is now a voluntary, unincorporated association with its principal office and place of business located at the city of Cincinnati, State of Ohio.

PAR. 7. That for more than two years prior to the 1st day of August, 1917, the membership of said National Harness Manufacturers' Association of the United States, was composed largely of city and district associations located in various cities throughout the States of the United States, whose membership was and is composed of persons, firms, copartnerships and corporations engaged in the business of manufacturing and selling harness and saddlery goods at retail.

PAR. 8. That for more than two years prior to the 1st day of August, 1917, such local or subsidiary association members of the National Harness Manufacturers' Association of the United States, purchased their supplies of harness and saddlery goods largely from wholesalers and jobbers in interstate commerce, including members of the Wholesale Saddlery Association of the United States.

PAR. 9. That on the 1st day of August, 1917, the officers of the National Harness Manufacturers' Association of the United States and their respective places of residence were as follows, to wit:

E. L. Richards, Sheldon, Iowa, president; E. F. Krallman, St. Louis, Mo., vice president; D. A. Hopkins, Grinnell, Iowa, treasurer; G. M. Sherz, Cincinnati, Ohio, secretary.

PAR. 10. That on August 1, 1917, the executive committee of said association, with their respective places of residence, were as follows, to wit:

Henry Groth, chairman, Milwaukee, Wis.; Frank C. Fischer, Milwaukee, Wis.; A. G. Bade, Chicago, Ill.; Henry Marquart, Chicago, Ill.

PAR. 11. That during the year prior to the 1st day of August, 1917, the membership of said National Harness Manufacturers' Association of the United States, consisted of various persons, firms, copartnerships and corporations located in different towns and cities throughout the States of

the United States, including the following district and city associations:

New England Retail Harness Manufacturers' Association, Southwestern Retail Harness Saddlery Association, Minnesota Retail Harness Manufacturers' Association, Western Retail Harness Manufacturers' Association, Northwestern Harness & Saddlery Manufacturers' Association, St. Louis & Vicinity Retail Harness Manufacturers' Association, Tri-State Harness Manufacturers' Association, Wisconsin Retail Harness Manufacturers' Association, Fox River Valley Retail Harness Manufacturers' Association, Milwaukee Retail Harness Manufacturers' Association, Central Illinois Retail Harness Manufacturers' Association, New York State Retail Harness Manufacturers' Association, Rochester, New York, Retail Harness Manufacturers' Association, Greater New York Harness Manufacturers' Association, Philadelphia Retail Harness Makers' Association, Nebraska Retail Harness Manufacturers' Association, South Dakota Retail Harness Manufacturers' Association, Iowa Retail Harness Manufacturers' Association, Michigan State Retail Harness Manufacturers' Association, Chicago Retail Harness Manufacturers' Association.

PAR. 12. That in the saddlery and harness business there is and has been some tendency for the jobbers and the manufacturers of saddlery accessories to sell direct to the larger consuming trade without the services of the retailer or of both jobber and retailer; and there is and has been a tendency for the accessory manufacturers to sell direct to retailers without the services of the jobber.

PAR. 13. That in large and important sections of the United States the wholesale and retail saddlery business is and long has been conducted as one operation, that many members of the Wholesale Saddlery Association in various parts of the United States do a combined wholesale and retail business, and were originally nothing but retailers.

PAR. 14. That prior to the organization of the Wholesale Saddlery Association it was the general custom for accessory manufacturers to sell direct to retailers and for retailers to buy direct from such manufacturers.

**PAR. 15.** That the declared policy of the Wholesale Saddlery Association is as follows:

It is the policy of this association to promote trade and commerce in the saddlery line in the time-honored and regular channels, namely, through sales of goods by the manufacturer to the jobber, by the jobber to the retailer, and by retailer to the consumer, thus maintaining the stability of business and contributing to the prosperity of all in their respective stations.

and that such policy is and always has been at variance with the tendencies and conditions set forth in paragraphs 12 and 14.

**PAR. 16.** That the efforts of the Wholesale Saddlery Association to establish its policy originally met with strong opposition on the part both of accessory manufacturers and of retailers, but that for a number of years prior to 1905 accessory manufacturers were associate members of the Wholesale Saddlery Association and were thereby committed to selling only to those concerns recognized by the Wholesale Saddlery Association as legitimate jobbers.

**PAR. 17.** That upon the abolition of associate membership in 1905 both jobbers and manufacturers announced that such action involved no change in their relations, that a large number of the accessory manufacturers, down to the time of the filing of the complaint, have continued to act in harmony with the policy of the Wholesale Saddlery Association, that this involved an acceptance of the views of the Wholesale Saddlery Association as to the parties which should be sold to as jobbers, and that specific instances of joint discussion in the convention of accessory manufacturers and the Wholesale Saddlery Association as to the status of disputed jobbers have occurred as recently as 1916.

**PAR. 18.** That as a result of objections made by the Wholesale Saddlery Association, its officers, or members, accessory manufacturers have refused various competitors of said members recognition as jobbers and such competitors have thereby been forced to purchase goods from members of the Wholesale Saddlery Association and to pay prices therefor higher than those charged by manufacturers to recognized jobbers.

PAR. 19. That the declared policy of the Wholesale Saddlery Association has involved a determination of what concerns were and what concerns were not jobbers in the view of the association, that for many years down to the filing of the complaint only concerns which were members or were eligible to membership in the Wholesale Saddlery Association were recognized by it as legitimate jobbers entitled to buy as such from manufacturers, and that the Wholesale Saddlery Association has made some efforts to have recognition as jobbers confined to its actual membership.

PAR. 20. That the Wholesale Saddlery Association has varied its requirements for membership from time to time according to the relative proportions of wholesale and retail business done by applicants for membership, finally in 1911, and subsequently requiring that applicants do an exclusively wholesale business, at the same time allowing its own members to continue doing both a wholesale and retail business.

PAR. 21. That since 1911, and continuously down to the filing of the complaint, the Wholesale Saddlery Association has taken the position that concerns doing a combined or closely affiliated wholesale and retail business were not only ineligible to membership but were also not entitled to recognition as so-called legitimate jobbers, classing such concerns as retailers regardless of the amount or proportion of their wholesale business.

PAR. 22. That accessory manufacturers have generally accepted eligibility to membership in the Wholesale Saddlery Association as their own test of what constitutes a so-called legitimate jobbing business, and have required since 1911 that concerns seeking to purchase as jobbers do an exclusively wholesale business, unless they were members of the Wholesale Saddlery Association, while some accessory manufacturers have accepted actual membership in the Wholesale Saddlery Association as the test of a so-called legitimate jobber.

PAR. 23. That the Wholesale Saddlery Association until 1907 compiled and circulated in the trade, particularly among accessory manufacturers, so-called jobbers' lists, composed of concerns which the association recognized as so-called legitimate jobbers, and which lists comprised members

of the Wholesale Saddlery Association and concerns, which while not members, were eligible to membership.

PAR. 24. That the Wholesale Saddlery Association discontinued said jobbers' list in 1907, but immediately began the circulation in the trade, particularly among accessory manufacturers, of membership lists of the association, that the said association announced its desire and purpose of having its membership lists recognized as containing all the so-called legitimate jobbers of the United States, and that said membership lists are still circulated and known among accessory manufacturers as the jobbers' list.

PAR. 25. That in addition to the compilation and circulation of lists of so-called legitimate jobbers, the Wholesale Saddlery Association through its secretary, has censored for a number of years down to 1916 the list of jobbers published and circulated among accessory manufacturers by the Harness Gazette, a trade paper published at Rome, N. Y., and has secured the removal and exclusion, from said Harness Gazette list, of concerns which were not eligible to membership in the Wholesale Saddlery Association. Since 1911 this has involved the removal and exclusion of concerns which do a combined or closely affiliated wholesale and retail business regardless of the amount or proportion of their wholesale business, unless such concerns were members of the Wholesale Saddlery Association.

PAR. 26. That for a number of years and as recently as 1916 the Wholesale Saddlery Association through its officers and members has given verbal and written notifications to accessory manufacturers that certain specific concerns were not entitled to recognition as so-called legitimate jobbers, these concerns being those which by reason of their connection with a retail business were not eligible to membership in the said association.

PAR. 27. That for many years and as recently as 1914 the Wholesale Saddlery Association has been notifying its members of the names of accessory manufacturers which were not in harmony with the policy of the said association as evidenced by their selling to the retail trade, including in that term concerns doing both a wholesale and retail business. As recently as 1916 the Wholesale Saddlery Association

urged its members to report for the purpose of publication, the names of accessory manufacturers selling the so-called retail trade and manufacturers in harmony with the association policy were given favorable publicity among the members of the Wholesale Saddlery Association.

PAR. 28. That the purpose and effect of notifying members of the Wholesale Saddlery Association of the names of those accessory manufacturers which were not and those which were in harmony with the policy of said association has been to induce the members to withhold and withdraw their patronage from the first-mentioned class of manufacturers and to confine and prefer their patronage to the last-mentioned class of manufacturers.

PAR. 29. That the aforesaid purpose was expressed and the aforesaid effect brought about until 1903 by the adoption of a pledge binding members of the Wholesale Saddlery Association to withhold and withdraw patronage from manufacturers not in harmony with association policy, and in later years, down to and including 1916, by the systematic and long-continued encouragement of the responsible officers of the association.

PAR. 30. That accessory manufacturers have been influenced in their determination of what concerns should be recognized and sold to by them as so-called legitimate jobbers, by the loss of patronage or the fear of loss of patronage from members of the Wholesale Saddlery Association.

PAR. 31. That the Wholesale Saddlery Association for many years has been opposing the practice of accessory manufacturers making direct shipments to retailers on the order of jobbers and the making of freight allowances to jobbers on such shipments, that in 1914 the Wholesale Saddlery Association formally adopted resolutions condemning such direct shipments and freight allowances therefor, resolving that "every support be given to those manufacturers who have seen fit to discontinue direct shipments." That these resolutions have never been modified or rescinded, and represented the policy of the association down to the filing of the complaint.

PAR. 32. That the purpose and effect of the aforesaid opposition of the Wholesale Saddlery Association to direct

shipments have been to hamper and impede the business of concerns which do not carry a full and complete jobbing stock on hand, to make more difficult the entrance of competitors into the jobbing field, and to prevent lower prices to the retailer resulting from the economy in freight and handling charges involved in such direct shipments.

PAR. 33. That in the adoption and establishment of the rule that concerns doing a combined or closely affiliated wholesale and retail business were not eligible to membership in the Wholesale Saddlery Association and in the adoption and establishment of the policy that such concerns were not entitled to recognition as so-called legitimate jobbers, the Wholesale Saddlery Association was acting in part under the influence and pressure and in response to the overtures of the National Harness Manufacturers' Association.

PAR. 34. That the officers, committees, and members of the National Harness Manufacturers and of the Wholesale Saddlery Association have actively cooperated to establish the principle that a combined or closely affiliated wholesale and retail business was not a legitimate wholesale business.

PAR. 35. That the National Harness Manufacturers' Association has transmitted to the secretary of the Wholesale Saddlery Association the names of wholesalers complained of by the retailers for competing with said retailers; that when such wholesalers were not members of the Wholesale Saddlery Association, the secretary of the latter association endeavored to prevent them from securing recognition by accessory manufacturers as so-called legitimate jobbers, but when such wholesalers were members of the Wholesale Saddlery Association, said secretary and other officers endeavored to persuade them to discontinue competition with the retailers.

PAR. 36. That the National Harness Manufacturers' Association has used its influence with the Wholesale Saddlery Association to prevent the admission of specific concerns to membership in the last-named association and the recognition of such concerns as so-called legitimate jobbers.

PAR. 37. That the constitutional requirements for membership in the Wholesale Saddlery Association were changed in 1911 to conform to the constitutional requirements for



associate membership in the National Harness Manufacturers' Association; that thereby and thereafter the two associations were in agreement on what constituted a so-called legitimate jobbing business, and that this agreement has been strengthened and more firmly established by resolutions adopted at the annual conventions of the aforesaid associations and by the active cooperation of their officers, committees, and members.

PAR. 38. That the Wholesale Saddlery Association since 1911 has taken the position that nonmembers doing a combined or closely affiliated wholesale and retail business were not legitimate jobbers; that it has compiled, censored, and circulated lists of so-called legitimate jobbers based upon whether they were doing an exclusively wholesale business; that it has notified accessory manufacturers that certain concerns doing a wholesale business were not legitimate because of their connection with a retail business, that is, has reported to its members the names of accessory manufacturers who sold to concerns classed as retailers notwithstanding that a portion of their business was wholesale, and that it has systematically encouraged the refusal and withdrawal of patronage from manufacturers who sold to concerns classed as retailers notwithstanding that a portion of their business was wholesale.

PAR. 39. That the National Harness Manufacturers' Association requested and secured the cooperation of the members of the Wholesale Saddlery Association in a refusal to sell to mail-order houses, general stores, hardware stores, and other competitors of retail harness manufacturers not recognized as legitimate by the National Harness Manufacturers' Association.

PAR. 40. That the National Harness Manufacturers' Association has refused the privilege of associate membership to accessory manufacturers and jobbers who sell to mail-order houses.

PAR. 41. That as a result of the opposition of the National Harness Manufacturers' Association to sales by manufacturers and jobbers to the aforesaid classes of competitors, said competitors have been prevented from purchasing as freely in interstate commerce as they would have been without such opposition.

PAR. 42. That the National Harness Manufacturers' Association has established an associate membership restricted to manufacturers and jobbers who do not sell to consumers or to mail-order houses, and who are otherwise in harmony with the policy of the association, that as early as 1891 and as late as 1917 credentials were issued to the traveling salesmen of associate members, and that the National Harness Manufacturers' Association, its officers, committees, and members, for many years and down to 1917 have systematically, emphatically, and persistently urged and encouraged affiliated retailers to withdraw and withhold patronage from concerns whose salesmen were not equipped with such credentials.

PAR. 43. That the official representatives of the National Harness Manufacturers' Association and the members of its subsidiary or affiliated associations have induced the members of the Wholesale Saddlery Association to use their influence with accessory manufacturers not to sell to mail-order houses.

#### CONCLUSION.

PARAGRAPH 1. That under the conditions and circumstances set out in the foregoing findings of fact, the purposes, policies, and practices of the Wholesale Saddlery Association, its officers, committees, and members, as described in paragraphs 15 to 30, inclusive, of the foregoing findings of fact, constitute a conspiracy or combination as alleged in paragraphs 5 and 6 of the complaint.

PAR. 2. That under the conditions and circumstances set forth in the foregoing findings of fact, the acts of the Wholesale Saddlery Association, as described in paragraphs 31 and 32 of said findings, constitute a conspiracy as alleged in paragraph 7 of the complaint.

PAR. 3. That under the conditions and circumstances set out in the foregoing findings of fact, the purposes, policies, and practices of the Wholesale Saddlery Association and the National Harness Manufacturers' Association, as described in paragraphs 33 to 38, inclusive, of said findings, constitute a conspiracy as charged in paragraphs 8, 9, and 10 of the complaint.

PAR. 4. That under the conditions and circumstances set out in the foregoing findings of fact, the purposes, policies, and practices of the National Harness Manufacturers' Association, as described in paragraphs 39 to 42, inclusive, of said findings, constitute a conspiracy as charged in paragraphs 11 and 12 of the complaint.

PAR. 5. That under the conditions and circumstances set out in the foregoing findings of fact, the acts of the National Harness Manufacturers' Association, as described in paragraph 43 of said findings, constitute a conspiracy against one of the classes of competitors referred to in paragraph 13 of the complaint.

PAR. 6. That the methods of competition set forth in the foregoing findings as to facts, in paragraphs 15 to 43, inclusive, and each and all of them, are under the circumstances and conditions therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondents having entered their appearances by Sims, Welch and Godman, and Lorbach and Garver, respectively, their attorneys, and having duly filed their answers admitting certain of the allegations of the said complaint and denying others therein contained, and thereafter the Commission having introduced testimony in support of the charges of the said complaint, and the respondent, the Wholesale Saddlery Association of the United States, having rested its case at the close of the Commission's testimony, and the respondent, National Harness Manufacturers' Association of the United States, thereupon having introduced its testimony, and the Commission heretofore having made and filed its report stating its findings as to the facts and its conclusions that the respondents have violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commis-

sion to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

PARAGRAPH 1. *It is ordered:* That the respondent, the Wholesale Saddlery Association of the United States, its officers, committees, and members, forever cease and desist from directly or indirectly:

1. Conspiring and combining among themselves to induce, coerce, and compel manufacturers of saddlery accessories to refuse to recognize certain nonmember competitors of the members of said association as being so-called legitimate jobbers or wholesalers, and to refuse to sell them as such in interstate commerce.

2. Continuing or establishing any and all tests or standards of what constitutes a so-called legitimate jobbing or wholesale business, whether based upon eligibility to membership or actual membership in said association, the amount of business done, the stock carried, or the proportion of business which is wholesale.

3. Compiling, censoring, and distributing lists containing or purporting to contain all the so-called legitimate jobbers based upon any of the aforesaid tests or standards of what constitutes a legitimate jobbing business.

4. Giving verbal and written notices to manufacturers of saddlery accessories that certain individuals and concerns not conforming to any of the aforesaid tests or standards are thereby not entitled to recognition as so-called legitimate jobbers.

5. Reporting to or circulating among the members of said association the names of accessory manufacturers who are not in harmony with the policy of said association, or who do not accept the Wholesale Saddlery Association's tests or standards of what constitutes a so-called legitimate jobbing business.

6. Withdrawing, withholding, threatening to withdraw or withhold, or urging the withdrawal and withholding of patronage from accessory manufacturers who are not in harmony with the policy of said association or who do not accept the Wholesale Saddlery Association's tests or standards of what constitutes a so-called legitimate jobbing business.

7. Inducing and compelling accessory manufacturers to refuse to make shipments direct to the retailer on the jobber's order or to refuse freight allowance on such shipments if made, and from favoring with their patronage accessory manufacturers who do not make such direct shipments or who do not make freight allowance therefor.

PAR. 2. *It is further ordered:* That the respondents, the Wholesale Saddlery Association of the United States and National Harness Manufacturers' Association of the United States, their officers, committees, and the members of their subsidiary or affiliated associations, forever cease and desist from directly or indirectly:

1. Conspiring or combining between or among themselves to induce, coerce, and compel accessory manufacturers to refuse to recognize as legitimate jobbers entitled to buy from manufacturers at jobbers' prices and terms, individuals, and concerns doing or endeavoring to do a combined closely affiliated wholesale and retail business.

2. Carrying on between and among themselves communications having the purpose, tendency, and effect of inducing, coercing, and compelling accessory manufacturers to refuse to recognize as legitimate jobbers entitled to buy from manufacturers at jobbers' prices and terms, individuals and concerns doing or endeavoring to do a combined or closely affiliated wholesale and retail business.

PAR. 3. *It is further ordered:* That the respondent, National Harness Manufacturers' Association of the United States, its officers, committees, and the members of its subsidiary or affiliated associations, forever cease and desist from directly or indirectly:

1. Conspiring or combining among themselves to induce, coerce, and compel manufacturers and jobbers to refuse to sell any of the competitors of retail harness manufacturers.

2. Using any scheme or device whatsoever whereby the active membership of said respondent association, consisting of retailers, concertedly favor with or confine their patronage to manufacturers and jobbers who comprise the associate membership of said respondent, or who do not compete with said active membership or sell to certain competitors thereof.

3. Using or continuing any system of credentials or other indications of manufacturers' and jobbers' sales policy with regard to certain competitors and consumers, and from encouraging and urging retailers to confine their patronage to or favor with their patronage, manufacturers and jobbers whose sales policy is in harmony with the said respondent association's requirements as set out in the Commission's findings of fact.

4. Inducing members of the Wholesale Saddlery Association of the United States to use their influence with accessory manufacturers not to sell to mail order houses or other competitors of retail harness manufacturers.

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## FEDERAL TRADE COMMISSION *v.* J. H. PATTERSON CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26,  
1914.

Docket No. 195.—March 17, 1919.

### SYLLABUS.

Where a corporation engaged in the purchase and sale of lumber and building materials caused its employees and others to send fictitious requests, on a large scale, to mail order competitors for statements, estimates, specifications, and prices, as well as special information, usually furnished to bona fide customers, the purpose being thereby to cause annoyance, delay, damage, and expense to such mail order competitors and to obtain information which could not have been secured had the purpose of the requests been disclosed:

*Held*, That such harassment constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that J. H. Patterson Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and

duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That the respondent, J. H. Patterson Co., is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business located at the town of Marengo, in said State of Illinois, and is now and for more than two years last past has been engaged in the sale of lumber and building materials among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent is now and for more than two years last past has been engaged in selling lumber and building materials at retail from its several lumber yards located in various towns and cities in the State of Illinois, each of the said several lumber yards being operated within the period above mentioned from the principal and central office of the respondent located in the town of Marengo, State of Illinois; that in the conduct of its business respondent purchases the aforesaid lumber and building materials in the various States of the United States and the Territories thereof and transports the same through other States and Territories in and to the various towns and cities in the State of Illinois where respondent's several lumber yards are located, from which lumber yards the said lumber and building materials are sold and shipped to purchasers in different States and Territories of the United States, and there is continuously and has been at all times herein mentioned a constant current of trade and commerce in said lumber and building materials between and among the various States and Territories of the United States and the District of Columbia and foreign countries, and especially from other States and Territories of the United States to and through the town of Marengo, State of Illinois, and from there to and through other States and Territories of the United States, the District of Columbia, and foreign countries.

PAR. 3. That a branch or form of retail lumber and building materials trade in the United States is now and for more than two years last past has been carried on by so-called "mail-order houses" which sell generally, through the medium of mail orders, lumber, and building materials in interstate commerce direct to purchasers in the various States and Territories of the United States, the District of Columbia, and foreign countries; that such mail-order houses are now and for more than two years last past have been dealers in lumber and manufacturers of building materials located in various towns and cities of the United States; that such mail-order houses for more than two years last past, besides having and owning their own sources of supply, have purchased and still do purchase supplies of lumber and building materials from various manufacturers and wholesale dealers without the intervention of retail dealers.

PAR. 4. That the respondent within two years last past adopted and has since maintained as a part of its plan of selling its lumber and building materials a system whereby systematically and on a large scale it writes and sends and causes to be written and sent and procures others to write and send to such mail-order houses letters containing requests for statements of estimates of the quantity and quality of lumber and building materials required for certain building purposes and the prices therefor, and also containing requests for the printed matter, advertisements and other such special information furnished to bona fide customers and prospective customers of such mail-order houses; that the writers and senders of such letters have no intention of buying any lumber or building materials from such mail-order houses, and conceal from such mail-order houses that they are engaged in the business of selling lumber and building materials or are sending for such information for persons or firms who are engaged in such business; that such letters cause such mail-order houses annoyance and delay in the transaction of their business and damage and expense and are written for the purpose of obtaining information which would not be furnished by such mail-order houses if it were disclosed to such mail-order houses that the writers of such letters are not bona fide prospective customers; that such plan of the respondent



hereinbefore set forth was adopted and has been maintained with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the sale of lumber and building materials and said plan of respondent was adopted and has since been maintained with the intent, purpose, and effect to hinder, embarrass, and restrain such mail-order houses in the conduct of their business.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, J. H. Patterson Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and fully stating its charges in that respect, and the above-named respondent, J. H. Patterson Co., having failed to file its answer to the said complaint of the Commission within 30 days of the service of said complaint or to make an appearance as provided for by the rules of practice before the Commission, but the respondent, J. H. Patterson Co., thereafter having signed and filed an agreed statement of facts, wherein it is stipulated and agreed that the Commission shall forthwith proceed upon such agreed statement of facts to make and enter its order disposing of this proceeding without the introduction of testimony in support of the same; the respondent, J. H. Patterson Co., forever waiving and relinquishing any and all right to the introduction of such testimony.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, J. H. Patterson Co., is now and was at all times hereinafter mentioned, a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business located in the town of

Marengo in said State of Illinois, and is now and for more than two years last past has been engaged in the purchase of lumber and building materials among the several States of the United States and the Territories thereof, and in the sale of lumber and building materials in the State of Illinois in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent is now and for more than two years last past has been engaged in selling lumber and building materials at retail from its several lumber yards located in various towns and cities in the State of Illinois, each of the said several lumber yards being operated within the period above mentioned from the principal and central office of the respondent located in the town of Marengo, State of Illinois; that in the conduct of its business respondent purchases the aforesaid lumber and building materials in the various States of the United States and transports the same through other States in and to the various towns and cities in the State of Illinois where respondent's several lumber yards are located, from which lumber yards the said lumber and building materials are sold to consumers, and there is continuously and has been at all times herein mentioned a constant current of trade and commerce in said lumber and building materials between and among the various States of the United States, and especially from other States of the United States to and through the various towns and cities in the State of Illinois where respondent's lumber yards are located.

PAR. 3. That a branch or form of retail lumber and building materials trade in the United States is now and for more than two years last past has been carried on by so-called "mail-order houses" which sell, generally through the medium of mail orders, lumber and building materials in interstate commerce direct to purchasers in the various States and Territories of the United States, the District of Columbia, and foreign countries; that such mail-order houses are now and for more than two years last past have been dealers in lumber and manufacturers of building materials located in various towns and cities of the United States; that such mail-order houses for more than two years

last past, besides having and owning their own sources of supply, have purchased, and still do purchase, supplies of lumber and building materials from various manufacturers and wholesale dealers without the intervention of retail dealers.

PAR. 4. That certain employees and local managers of the respondent for more than two years last past in a number of instances have written and sent and caused to be written and sent to mail-order houses letters containing requests for statements of the quality and quantity of lumber and building materials required for certain building purposes, the price therefor, and also containing requests for special information furnished to bona fide customers of such mail-order houses; that the writers and senders of such letters had no intention of buying any lumber or building materials from such mail-order houses and concealed from such mail-order houses that they are engaged in the business of selling lumber and building materials, or are sending for such information for persons or firms who are engaged in such business; that such letters caused such mail-order houses annoyance and delay in the transaction of their business and damage and expense, and are written for the purpose of obtaining information which would not be furnished by such mail-order houses if it were disclosed to such mail-order houses that the writers of such letters are not bona fide prospective customers, said letters and requests having been made with the knowledge and consent of the respondent, and that the information secured as a result of said requests has been used to the benefit of the respondent, and that the respondent knew or was chargeable with knowledge that the granting of or even the consideration of such requests caused the mail-order houses expenses.

#### CONCLUSION.

That the said method of competition set forth in the foregoing finding as to the facts, and each and all thereof, under the circumstances therein set forth, constitute unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the said act of Congress approved September 26, 1914, entitled "An act to create a Federal

Trade Commission, to define its power and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein on the 8th day of October, 1919, and the respondent, J. H. Patterson Co., having failed to answer the complaint of the Commission within 30 days from the service of said complaint or to make appearance as provided for by the rules of practice before the Commission, and the respondent, J. H. Patterson Co., thereafter being desirous of expediting the disposition of this matter, entered into an agreed statement of facts wherein it is stipulated and agreed that the Commission shall forthwith proceed upon said statement of facts to make and enter its report, stating its findings as to the facts and its conclusion, and to enter its order disposing of this proceeding without the introduction of testimony in support of the same, said respondent, J. H. Patterson Co., forever waiving and relinquishing any and all right to the introduction of such testimony, and the Commission having made and filed its report, stating its findings as to the facts and its conclusion that the respondent, J. H. Patterson Co., has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," said report being hereby referred to and made a part hereof: Now, therefore,

*It is ordered:* That the respondent, J. H. Patterson Co., town of Marengo, State of Illinois, and its agents, representatives, servants, and employees, forever cease and desist from—

On a large scale or in bad faith or by subterfuge, writing and sending, causing to be written and sent, or procuring others who are not bona fide customers or bona fide prospective customers of mail-order concerns, to write and send to mail-order concerns, requests for estimates of the kind, quantity, and prices of lumber and building material for certain building purposes, and for catalogues, printed matter,

and special information intended only for bona fide customers and bona fide prospective customers; provided, that nothing herein contained shall be taken to prohibit such requests where disclosures are made by the parties making them of their connection with or their acting for respondent.

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**FEDERAL TRADE COMMISSION v. GEORGE MUENCH.**

**COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5, OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.**

Docket No. 122.—March 26, 1919.

**SYLLABUS.**

Where an individual engaged in the manufacture and repairing of machinery gave and offered to give an employee of a customer, without the knowledge and consent of his employer, sums of money, as an inducement for him to influence his employer to purchase his goods or to refrain from dealing with his competitors: *Held*, That such payments and offers to pay, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

**COMPLAINT.**

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that George Muench, hereinafter referred to as respondent, has been for more than a year last past, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

**PARAGRAPH 1.** That the respondent, George Muench, is a resident of the State of Connecticut, having his principal factory, office, and place of business located at the city of Stamford, in said State, now and for more than one year last past engaged in manufacturing and selling various kinds of machinery throughout the States and Territories of the

United States, and that at all times hereinafter mentioned, the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships and corporations manufacturing and selling like products.

PAR. 2. That in the course of his business of manufacturing and selling machinery throughout the States of the United States and the Territories thereof, the respondent, for more than one year last past, has been systematically and on a large scale, giving and offering to give to employees of both his customers and prospective customers, as an inducement to influence their employers to purchase or contract to purchase from the respondent machinery, without other consideration therefor, gratuities such as liquor, cigars, meals, theater tickets, valuable presents and entertainment.

PAR. 3. That in the course of his business of manufacturing and selling machinery throughout the States and Territories of the United States, the respondent, for more than one year last past, has been systematically, on a large scale, secretly paying and offering to pay to employees of both his customers and prospective customers, and his competitors' customers and prospective customers, without the knowledge and consent of their employers, and without other consideration therefor, large sums of money as an inducement to influence their said employers to purchase or contract to purchase from the respondent machinery or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondent.

PAR. 4. That in the course of his business of manufacturing and selling machinery throughout the States and Territories of the United States, the respondent, for more than one year last past has been, systematically and on a large scale, secretly loaning and offering to loan to employees of both its customers and prospective customers, and his competitors' customers and prospective customers, without the knowledge and consent of their employers, and without other consideration therefor, large sums of money as an inducement to influence their said employers to purchase from the respondent machinery, or to influence such customers to refrain from dealing or contracting to deal with the competitors of the respondent.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondent, George Muench, has been, within the two years last past, using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered his appearance by N. C. Downs, his attorney, and having filed his answer, admitting that certain of the matters and things alleged in said complaint are true in the manner and form therein set forth, and denying others therein contained, and the Commission having offered testimony in support of its charges in said complaint, and the respondent having waived the right to offer testimony in his behalf, and the attorneys for the Commission and respondent having submitted their briefs as to the law and the facts; now, therefore, The Federal Trade Commission makes and enters this, its report, stating its findings as to the facts and its conclusions.

### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That said respondent, George Muench, is a resident of the State of Connecticut, and has a machine shop and office in the city of Stamford, in said State, and is now and at all times hereinafter mentioned, was engaged in the business of repairing machinery and manufacturing to order and under contract, special machinery, including shaftings for use on bronze powder machines, and that said respondent, George Muench, is not generally engaged in interstate commerce, not having manufactured any machinery or done any repair work to be shipped out of the State of Connecticut into any other State or Territory of the United States except one shipment into the State of Pennsylvania in the year 1916, but said respondent, George Muench, is now and at all times hereinafter mentioned has been engaged in competition with

other persons, firms, copartnerships, and corporations, which last named were and are engaged in the manufacture and sale of like products in interstate commerce.

PAR. 2. That said respondent, George Muench, in the course of his business, for more than two years last past has been systematically and on a large scale secretly paying to one Maximillian J. Fuchs, an employee of the firm of Baer Bros., of New York City, a customer of said respondent, without the knowledge and consent of said Baer Bros., and without any other consideration therefor, large sums of money as an inducement to influence the said customer, Baer Bros., to purchase certain machinery and shafting from the said respondent, or to influence said customer, Baer Bros., to refrain from dealing or contracting to deal with the competitors of said respondent, and that said Maximillian J. Fuchs was the employee delegated by said Baer Bros. to decide upon and select the machinery and shafting to be purchased for said Baer Bros., and also was delegated to select the party from whom said machinery and shafting should be purchased.

PAR. 3. That the said sums of money given as aforesaid caused the said customer, Baer Bros., to refrain from dealing or contracting to deal with a competitor or competitors of said respondent.

#### CONCLUSIONS.

That the methods set forth in the foregoing findings of fact, under the circumstances therein set forth, are unfair methods of competition, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent, George Muench, having entered his appearance by N. C. Downs, Esq., his attorney, and thereafter the Commission having offered testimony in support of its charges in said complaint, and respondent having waived all right to offer testimony in his behalf, and the attorneys for the Commission and the re-



spondent having submitted briefs as to the law and facts in said proceeding, and the Commission having made and entered its report stating its findings as to the facts and its conclusions, that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered:* That the respondent, George Muench, and his agents, representatives, servants, and employees, cease and desist from directly or indirectly—

(1) Giving or offering to give to the employees of his customers or prospective customers, or those of his competitors' customers or prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent, George Muench, machinery and machine parts and shafting without other consideration therefor, gratuities, such as money, cash bonuses, commissions, cigars, meals, valuable presents, and other personal property.

(2) Giving or offering to give to employees of his customers or prospective customers, or those of his competitors' customers or prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent machinery and machine parts and shafting, etc., without other consideration therefor, entertainment, consisting of amusements or diversions of any kind whatsoever.

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## FEDERAL TRADE COMMISSION *v.* THE LASSO PICTURES CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER  
26, 1914.

Docket No. 222.—March 26, 1919.

### SYLLABUS.

Where a concern engaged in producing, leasing, and selling motion-picture films acquired certain films previously displayed to the public by others, and, with intent and effect of deceiving and mis-

leading the public and of injuring competitors, changed the names and titles of the films so obtained, and sold, leased, and offered the same for sale under new names and titles, for exhibition as new and original films:

*Held*, That the relabelling and sale of old films, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that the Lasso Pictures Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, The Lasso Pictures Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal offices and place of business located at the city of New York, in said State, now and at all times hereinafter mentioned engaged in the business of producing, leasing, and selling motion pictures generally in commerce throughout the various States of the United States, the Territories thereof, and the District of Columbia, in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, The Lasso Pictures Co., with its office and principal place of business located at the city of New York, State of New York, in the conduct of its business purchases and enters into contracts of purchase for certain motion-picture films in the different States and Territories of the United States, transporting the same through other States of the United States in and to the city of New York, State of New York, the same being continuously moved to, from, and among other States and Territories of the United States and the District of Columbia, and there is

continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in said motion-picture films between and among the various States of the United States, the Territories thereof, and the District of Columbia, and especially to and through the city of New York, State of New York, and therefrom to and through the other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That within the year last past the respondent, the Lasso Pictures Co., with the purpose, intent, and effect of stifling and suppressing competition in the motion-picture industry in interstate commerce, has secured certain motion-picture films which have been exhibited and displayed to the public by motion-picture exhibitors prior to the date respondent secured same, and that respondent changes the title and names of said motion-picture films, sells, leases, and offers for sale such old films for exhibition under new names and titles as new and original motion-picture films; that the exhibiting of such renamed and retitled pictures as aforesaid is calculated and designed to and does defraud and deceive the exhibitors and general public, and mislead them into the belief that said picture films are new and original and were never before exhibited or produced.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondents, Jacob Weinberg and Joseph M. Goldstein, copartners doing business under the trade name and style of Lasso Films, have been, within the two years last past using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes," and that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in that respect; and the respondents having entered their appearance by Herman J. Rubenstein, their attorney duly author-

ized and empowered to act in the premises, and having filed their answer admitting that certain of the matters and things alleged in said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding, without the introduction of testimony or the presentation of argument; therefore, the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, Jacob Weinberg and Joseph M. Goldstein, are copartners doing business under the trade name and style of Lasso Films with their principal office and place of business located in the city of New York in said State, and are now and at all times hereinafter mentioned engaged in the business of producing, leasing, and selling motion-picture films generally in commerce throughout the various States of the United States, the Territories thereof, and the District of Columbia in competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondents, Jacob Weinberg and Joseph M. Goldstein, in the conduct of their business purchased and entered into contracts of purchase for certain motion-picture films in the different States of the United States, transporting the same through various States of the United States in and to the city of New York, State of New York; the same being continually moved to, from, and among other States and Territories of the United States and the District of Columbia, and there is continuously and has been at all times hereinafter mentioned, a constant current of trade and commerce in said motion-picture films between and among the

various States of the United States, the Territories thereof, and the District of Columbia, and especially to and through the city of New York, State of New York and therefrom to and through the other States of the United States, the Territories thereof, and the District of Columbia.

**PAR. 3.** That within the year last past prior to the issuance of the complaint herein, the respondents Jacob Weinberg and Joseph M. Goldstein, copartners doing business under the trade name and style of Lasso Films, secured certain motion-picture films which had been exhibited and displayed to the public by motion-picture exhibitors previous to the date respondents secured same, and that respondents after obtaining the said films changed the title and names of the said films, sold, leased, and offered for sale such old films for exhibition under new names and titles as new and original motion-picture films; that the substitution of new names and new titles for old motion-picture films was done with the intent, purpose, and effect of stifling and suppressing competition in the motion-picture industry, and furthermore such substitution of new names and new titles for old motion-picture films is calculated and designed to and does deceive the general public, and mislead them into the belief that the said motion-picture films so renamed and retitled are new and original and have never been exhibited or produced.

#### CONCLUSION.

That the method of competition set forth in the foregoing findings as to the facts under the circumstances therein set forth, are unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein and the respondents, Jacob Weinberg and Joseph M. Goldstein, copartners doing business under the trade name and style of Lasso Films, having entered

their appearance by Herman J. Rubenstein, Esq., their attorney duly authorized and empowered to act in the premises, and having filed their answer and thereafter having made, executed, and filed an agreed statement of facts in which they stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusions that the respondents have violated section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered:* That the respondents, Jacob Weinberg and Joseph M. Goldstein, copartners doing business under the trade name and style of Lasso Films, their agents, representatives, servants, and employees cease and desist from directly or indirectly changing the titles and names of old motion picture films which have been exhibited prior to the date respondent secured same and substituting new names and titles unless it is clearly, definitely, distinctly, and unmistakably shown to purchasers and lessees of motion picture films, and the motion picture theater going public that the motion picture films so renamed and retitled are old motion picture films and are reissued under new names and new titles.

**FEDERAL TRADE COMMISSION v. E. P. JANES,  
S. A. PAUL, IRONCLAD TIRE CO. (INC.), QUEEN  
RUBBER CO. (INC.), OVEROAD TIRE CO. (INC.),  
AND WORTH-MORE TIRE CO. (INC.).**

**COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SEC-  
TION 5 OF AN ACT OF CONGRESS, APPROVED SEPTEMBER 26,  
1914.**

**Docket No. 243.—March 26, 1919.**

**SYLLABUS.**

**Where a person owning a majority of the capital stock of various cor-  
porations and acting for himself or one or more of such corpora-  
tions—**

- (a) advertised automobile tires rebuilt or reconstructed from partially  
worn and discarded tires from which the name and brand or mark  
of the original maker had been obliterated, in such manner as to  
convey the impression that the goods were new and made of there-  
before unused materials;**
- (b) failed in his advertising matter clearly to disclose to purchasers  
that the goods were thus rebuilt or reconstructed; and**
- (c) sold such tires without advising purchasers that they were not  
new and that they were composed in part of used or reclaimed  
materials:**

**Held, That such sales and advertisements, under the circumstances  
set forth, constituted unfair methods of competition in commerce,  
in violation of section 5 of the act of September 26, 1914.**

**COMPLAINT.**

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that E. P. Janes, S. A. Paul, Ironclad Tire Co. (Inc.), Queen Rubber Co. (Inc.), Overoad Tire Co. (Inc.), and Worth-More Tire Co. (Inc.), hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and, it appearing that a proceeding by it in respect thereto would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

**PARAGRAPH 1. That the respondents, Ironclad Tire Co. (Inc.), Queen Rubber Co. (Inc.), Overoad Tire Co. (Inc.),**

and Worth-More Tire Co. (Inc.), are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York, having their principal office and place of business located at the city of New York, in said State, with branch offices in other States of the United States; S. A. Paul and E. P. Janes control a majority of the capital stock and are the dominant and controlling factors in the aforesaid corporations; that all of the said respondents are now and at all times hereinafter mentioned have been engaged in the business of selling automobile tires of the character and in the manner hereinafter mentioned in competition with manufacturers and dealers in automobile tires among the several States and Territories of the United States, the District of Columbia, and foreign countries.

PAR. 2. That in the conduct of their business respondents purchase old and discarded automobile tires in various States and Territories of the United States and transport the same through other States and Territories of the United States in and to the city of New York, State of New York, and their other branch offices located in various States, where they are made and manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so remade and manufactured they are continuously moved to, from, and among other States of the United States, the Territories thereof, and the District of Columbia, and there is continually and has been at all times herein mentioned a constant current of trade and commerce in said products between and among the various States and Territories of the United States and District of Columbia and foreign countries, and more particularly from other States and Territories of the United States and the District of Columbia to and through the city of New York in said State, and from there to and through other States of the United States and Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondents are now and for more than a year last past have been engaged in purchasing old and discarded automobile tires and causing them to be repaired and coated with a thin coating of rubber or composition of



similar appearance for the purpose of enabling said tires to be offered to the public for sale in the manner hereinafter more specifically mentioned.

PAR. 4. That the respondents for more than one year last past, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of automobile tires in interstate commerce, as aforesaid, purchase old and discarded automobile tires of various makes and bearing various trade names or brands, and in the process of having said tires repaired by said coating of rubber or composition, the name of the maker of such tire and the original mark or brand is caused to be removed or concealed, and caused to be remarked or restamped with new names or brands, such new names or brands depending upon the medium through which the said tires are to be offered for sale; that the remarking or restamping of said new names or brands upon old and discarded or worn tires as aforesaid, and advertising them under such new names, is calculated and designed to and does mislead and deceive purchasers and prospective purchasers to believe that said tires offered for sale by respondents are new tires manufactured by or specially for respondents.

PAR. 5. That it is the common belief and impression among dealers and consumers of automobile tires and the purchasing public generally that automobile tires having the appearance of and sold as new and unused tires are manufactured from new and unused material and in accordance with the methods and processes employed generally by manufacturers of standard automobile tires and not by the process as employed and used by respondents as described and set forth in paragraph 3 of this complaint; that for more than one year last past, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of automobile tires, the respondents circulated and caused to be circulated advertisements through various publications and through the mails to the trade, and among consumers generally, that respondents' automobile tires are new and have not been made over as set forth in paragraph 3, which advertisements have conveyed and do convey and are calcu-

lated and designed to convey the belief and impression that the said tires manufactured by the respondents are composed of new and unused material, and that the respondents have at all times herein mentioned concealed and wholly failed to disclose that the said tires so manufactured by respondents are in fact remade as described in paragraph 3.

PAR. 6. That for more than one year last past, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of automobile tires in interstate commerce, respondents advertised that such tires were guaranteed to give service of 4,000 miles, and that if said tires failed to give such service respondents would furnish another tire for one-half the price quoted for such tires, thus representing and thereby creating the belief and impression among users of tires generally that said tires were calculated and expected by respondents to give service of 4,000 miles; that each of the respondents well knew that said tires have been worn and discarded before being coated with the thin film of rubber or composition, as aforesaid, and that said representations that said tires will run 4,000 miles were false, misleading, and calculated and designed to mislead and deceive purchasers and prospective purchasers.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondents, E. P. Janes, S. A. Paul, Ironclad Tire Co. (Inc.), Queen Rubber Co. (Inc.), Overroad Tire Co. (Inc.), and Worth-More Tire Co. (Inc.), have been for more than one year last past using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in that respect; and the respondents having entered their appearance by David D. Deutsch, their attorney duly authorized and empowered to act in the premises, and having filed their answer admitting that certain of the matters and things

alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as evidence in this proceeding and in lieu of testimony, and shall forthwith thereupon make its report, stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore, the Federal Trade Commission now makes and enters this its report, stating its findings as to the facts and its conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, E. P. Janes, owns the majority of the capital stock and has the controlling interest in the aforesaid corporations; that the respondent, S. A. Paul, has sold out his entire interest in the aforesaid corporations and is no longer connected with either or any of them; that the respondents, Ironclad Tire Co. (Inc.), Queen Rubber Co. (Inc.), Overroad Tire Co. (Inc.), and Worth-More Tire Co. (Inc.), are corporations organized, existing under the laws of New York, and formerly did business under and by virtue of the laws of the State of New York, with their principal offices and places of business located in the city of New York, State of New York.

PAR. 2. That the respondents, E. P. Janes, Ironclad Tire Co. (Inc.), Queen Rubber Co. (Inc.), Overroad Tire Co. (Inc.), and Worth-More Tire Co. (Inc.), in the conduct of their business purchased and entered into contracts of purchase for rebuilt and reconstructed tires (hereinafter more fully described) from dealers who engaged in the business of rebuilding and reconstructing automobile tires; said rebuilt tires are purchased in the different States of the United States and thence transported through various States of the United States in and to the city of New York, State of New York, and are then sold in turn by respondent corporations to purchasers in various States and Territories of the United States in competition with manufacturers and dealers in

standard automobile tires. The said tires are continually moved to, from, and among other States of the United States, and there is continually and has been at all times hereinafter mentioned, a constant current of trade and commerce in said reconstructed automobile tires between and among the various States of the United States, the Territories thereof, and the District of Columbia, and especially to and through the city of New York, State of New York, and therefrom to and through the other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That the said tires sold and offered for sale by respondents are rebuilt and reconstructed tires from partially used and discarded tires and are constructed substantially as follows: The fabric to a great extent used in building the tires is what is known as Egyptian duck or sea-island cotton, taken only from carefully selected partially worn standard make tires. This fabric is carefully examined, repaired, buffed, and cleaned, and is given several coats of high quality vulcanizing cement; to reinforce and strengthen the tire a reliner is then added. The cushion and tread stock, consisting of pure rubber, reclaimed rubber, and chemicals in proper proportion, are then added; to complete the reconstruction the tires are cured in large hydraulic vulcanizers.

PAR. 4. That the aforesaid partially used and discarded automobile tires were of various makes and bore various trade-marks or brands, and that in the process of having said tires rebuilt or reconstructed the name of the maker of such tires and the original mark or brand was obliterated, and the said tires were marked or stamped with other names or brands, such other names or brands depending upon the medium through which said tires were offered for sale; that respondents for more than one year last past have caused the said tires to be marked in the manner described, and advertised the said tires under such names; that the marking of such other names or brands upon the rebuilt or reconstructed tires as aforesaid, and advertising them under such other names has a tendency to mislead the purchasing public into believing that the said tires offered for sale by respondents are new tires manufactured from new and unused material.

PAR. 5. That it is the common belief and impression among dealers and consumers of automobile tires and the purchasing public generally that automobile tires having the appearance of, and sold as new and unused tires are manufactured from new and unused material and in accordance with the methods and processes employed generally by manufacturers of standard automobile tires and not by the processes as employed and used by respondents as described and set forth in paragraph 3; that for more than one year last past respondents circulated and caused to be circulated advertisements through various publications and through the medium of the mails to the trade and among consumers generally, wherein they did not state that the said tires were rebuilt or reconstructed in the manner set forth in paragraph 3 hereof, that such advertisements may tend to convey the belief and impression that the said tires manufactured by respondents are composed of new and unused material.

PAR. 6. That for more than one year last past respondents have circulated or caused to be circulated advertisements through various publications and through the medium of the mails to the trade and among consumers generally, that said advertisements contained a representation substantially to the effect that if a tire failed to give service of 4,000 miles, such tire would be replaced at one-half the price paid; that each of the respondents well knew that the said tires have been rebuilt and reconstructed from partially used and discarded automobile tires, and that such advertisements may tend to create the belief and impression among users of tires that said rebuilt and reconstructed tires sold by respondents would give service of 4,000 miles.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts under the circumstances therein set forth are unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondents, E. P. Janes, S. A. Paul, Ironclad Tire Co. (Inc.), Queen Rubber Co. (Inc.), Overroad Tire Co. (Inc.), and Worth-More Tire Co. (Inc.), having entered their appearance by David D. Deutsch, Esq., their attorney duly authorized and empowered to act in the premises, and having filed their answer and thereafter having made, executed, and filed an agreed statement of facts in which they stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this proceeding and in lieu of testimony, and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusions that the respondents have violated section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered:* That the respondents, their officers, agents, representatives, servants, and employees cease and desist from directly or indirectly—

Circulating and causing to be circulated advertisements which are calculated and designed to create the belief and impression among consumers of automobile tires that rebuilt and reconstructed tires, restamped with new names and brands, are new tires manufactured from new and unused material, unless it is clearly, definitely, distinctly, and unmistakably shown in said advertising matter to consumers of automobile tires generally that the said tires so sold by respondents are not composed of new and unused material and not manufactured in accordance with the methods and processes employed generally by manufacturers of standard automobile tires.

**FEDERAL TRADE COMMISSION v. WARD BAKING COMPANY.**

**COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.**

Docket No. 21—April 8, 1919. Order modified September 2, 1919.

**SYLLABUS.**

Where a corporation engaged on a large scale in the manufacture and sale of bread and cake gave and offered to give bread free of cost to purchasers and prospective purchasers, with the tendency and effect of stifling and suppressing competition in the manufacture and sale of bread:

*Held*, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

**COMPLAINT.**

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Ward Baking Co. of New York, hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

● **PARAGRAPH 1.** That the respondent, Ward Baking Co., of New York, is now, and was at all times hereinafter mentioned, a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of New York, in said State, and is now, and for two years last past has been engaged in the manufacture, shipment, and sale of bread and cake in commerce among the several States of the United States.

**PAR. 2.** That with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and

sale of bread, the respondent, in the course of such commerce, at periods of several consecutive days during the past two years, has daily given gratis to each purchaser of its bread in certain places in the United States, a quantity of bread equal to the amount of bread daily bought and paid for by such purchaser from the respondent, during the period bread is so given gratis; and the respondent still continues the practice of giving bread gratis as aforesaid with like intent, purpose, and effect.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, The Ward Baking Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect thereof would be to the interest of the public, and fully stating its charges in that respect, and the said respondent having entered its appearance by Eugene H. Hickok, its attorney, and filed its answer to said complaint admitting certain allegations therein contained and denying certain others thereof, and the issues so raised having pursuant to due notice given to said respondent, come on for hearing, and the Commission having appeared and introduced its evidence in support of its said charges, and the respondent having appeared and introduced its evidence in denial thereof, and all testimony heard at said hearing having been reduced to writing and, together with the evidence received, having been filed in the office of the Commission, and the Commission and respondent having through their respective attorneys submitted briefs and made oral argument herein, the Commission, being fully advised in the premises and upon consideration thereof, now makes this its report and findings as to the facts and conclusions.



## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Ward Baking Co., is now, and was at all times hereinafter mentioned, a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of New York, in said State, and is now and for two years last past has been engaged in the manufacture, shipment, and sale of bread and cake in commerce among the several States of the United States in direct competition with other persons, firms, copartnerships, and corporations similarly engaged; that respondent is one of the largest bakery companies in the United States, and has many branch bakeries and offices located in numerous States of the United States from which it distributes its bread locally and in commerce among the various States of the United States; that respondent because of its large financial resources is able to operate its business at a loss for a long period of time and by this means undersell and eliminate most of its competitors.

PAR. 2. That with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of bread, in interstate commerce, the respondent, in the course of such commerce, at periods of several consecutive days, and particularly during the month of May, 1917, did, in conducting a so-called free bread campaign, daily give to each purchaser of its bread, in certain places of the United States, a quantity of bread equal to the amount of bread daily bought and paid for by such purchaser from the respondent during the period bread was so distributed free of charge.

PAR. 3. That respondent, during the said month of May, in the year 1917, for a period of about four weeks in the cities of New Bedford and Fall River, in the State of Massachusetts, and other towns and cities in said State, and also in the towns of North Tiverton and Stone Bridge, in the State of Rhode Island, did give to all who purchased bread from it an amount of bread equal to the amount so purchased, with the intent and purpose of suppressing and stifling competition in the sale of bread in the towns and cities named in the State of Massachusetts and the State of

Rhode Island, and that all the bread so sold and given away in the State of Rhode Island, during said period when said free bread campaign was being so conducted, was manufactured at the city of Cambridge, in the State of Massachusetts, and shipped by the said respondent from the city of Cambridge to the city of Fall River, both in the State of Massachusetts, and from said city of Fall River was distributed by wagons, trucks, and other conveyances across the State line and into the State of Rhode Island, in the vicinity of North Tiverton and Stone Bridge, and there given away to purchasers of bread from said respondent, in the manner and form aforesaid, and that said bread so given away and distributed in the State of Rhode Island was transported and sold in interstate commerce across the State lines dividing the State of Massachusetts and the State of Rhode Island, for the purpose and with the effect of stifling and suppressing competition in interstate commerce, as aforesaid.

PAR. 4. That bakery companies, other than the respondent company, were engaged in the manufacture, distribution, and sale in interstate commerce of bakery products in competition with said respondent company at and during the time that its free bread campaign was being so conducted, and that the business of such other companies in the State of Massachusetts and in the vicinity of North Tiverton and Stone Bridge, in the State of Rhode Island, was injuriously affected by said free bread campaign so conducted by the respondent as aforesaid; that during the time that respondent was conducting its said free bread campaign it sold its bakery products at less than the cost of production, and lost large sums of money in the vicinity where such campaigns were carried on; that during said time respondent greatly increased its shipments of bread from Cambridge to Fall River, and local bakeries sustained a decrease in the number and amount of the sales of their products locally, and at the Rhode Island municipalities hereinabove mentioned.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraphs 2, 3, and 4, and each

and all of them, are, under the circumstances therein set forth, unfair methods of competition, in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, the Ward Baking Co., has been, and now is, using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect thereof would be to the interest of the public, and fully stating its charges in this respect, and the respondent having entered its appearance by Eugene H. Hickok, its attorney, and filed its answer to said complaint, admitting certain allegations therein contained, and denying certain others thereof, and the issues so raised having, pursuant to due notice given to said respondent, come on for hearing, and the Commission, having appeared and introduced its evidence in support of its said charges, and the respondent, having appeared and introduced its evidence in denial thereof, and all testimony heard at said hearing having been reduced to writing, and, together with the evidence received, having been filed in the office of the Commission, and the Commission and respondent having, through their respective attorneys, submitted briefs and made oral argument herein, and the Commission, being fully advised in the premises, and upon consideration thereof, having made its report in writing, wherein it stated its findings as to the facts and its conclusions that the respondent has violated the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and

which said report is hereby referred to and made a part hereof; Now, therefore,

*It is ordered*, That the respondent, the Ward Baking Co., and its officers, directors, agents, servants, and employees cease and desist from directly or indirectly:

1. Giving or offering to give free of charge to purchasers or prospective purchasers of its bread or other bakery products, whether such gift is made for the purpose of advertising respondent's products, or inducing dealers to purchase from it, or for any other purposes whatsoever, bread or other bakery products.

2. Selling, or offering to sell, its bread or other bakery products upon the condition, understanding, or agreement that it will give, free of charge, bread or other bakery products for the purpose of advertising respondent's products, or inducing dealers to purchase from it, or for any other purpose whatsoever.

MODIFIED ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above named respondent, Ward Baking Co., had been and was at the time of the issuance of the said complaint using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect thereof would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by Eugene H. Hickok, its attorney, and having filed its answer to said complaint admitting certain allegations therein contained and denying certain others thereof, and the issues so raised having, pursuant to due notice given to said respondent, come on for hearing, and the Commission having appeared and introduced its evidence in support of its said charges, and the respondent having appeared and introduced its evidence in denial thereof, and all testimony taken at said hear-

ing having been reduced to writing, and together with the evidence received having been filed in the office of the Commission, and the Commission and respondent having, through their respective attorneys, submitted briefs and made oral argument herein, and the Commission, being fully advised in the premises and upon consideration thereof, having made its report in writing, wherein it stated its findings as to the facts, and its conclusion that the respondent has violated the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and the Commission having heretofore, to wit, on the 8th day of April, 1919, entered and served its order upon the respondent requiring it to cease and desist from certain practices, as reference to the said order being had will more fully and at large appear:

- And it appearing to the Commission, upon reconsideration of the matter, that said order should be modified in certain respects:

Now, therefore, the Federal Trade Commission, on its own motion, under and by virtue of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," hereby orders that the order to cease and desist heretofore made in this proceeding on the 8th day of April, 1919, be, and the same is, hereby modified, so that, as modified, said order shall read as follows, to wit: Now, therefore,

*It is ordered,* That the respondent, Ward Baking Co., its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly initiating or carrying on, in the course of interstate commerce, any so-called free-bread campaign or any practice of supplying bread free of cost to retail dealers in quantities equal to those purchased from respondent by such dealers, or in any other quantities, where such practice is calculated to or does stifle or suppress competition in the manufacture and sale of bread.

**FEDERAL TRADE COMMISSION v. BALTIMORE  
HUB-WHEEL & MANUFACTURING CO., AND  
THE HOLLAND-BADEN-RAMSEY CO.**

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 5 OF AN ACT OF CONGRESS, APPROVED SEPTEMBER  
26, 1914.

Docket No. 187.—April 9, 1919.

**SYLLABUS.**

Where two jobbers of automobile accessories, with the intent, purpose, and effect of embarrassing, harrasing, hampering, and obstructing retail competitors, threatened a manufacturer of such accessories that, unless it ceased allowing to such retailers the same rate of discount as it allowed to them, they would cease to purchase from it:

*Held*, That such threats, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

**COMPLAINT.**

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Baltimore Hub-Wheel & Manufacturing Co. and the Holland-Baden-Ramsey Co., hereinafter referred to as the respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

**PARAGRAPH 1.** That the respondents, Baltimore Hub-Wheel & Manufacturing Co. and the Holland-Baden-Ramsey Co., are now and were at all times hereinafter mentioned corporations organized, existing and doing business under and by virtue of the laws of the State of Maryland, having each its principal office and place of business in the city of Baltimore, in said State, and are now and for many years last past have been engaged in the purchase and sale of automobile accessories.

PAR. 2. That each of the respondents in the conduct of its business, enters into contracts of purchase for automobile accessories from manufacturers and others, in the different States and Territories of the United States and the District of Columbia, causing the same to be transported to its place of business in Baltimore, Md., whence such accessories are sold by respondents and shipped to the purchasers thereof; that as a part of the transactions of which said purchases and sales are also a part, such automobile accessories are continuously moved to, from, and among other States and Territories of the United States, the District of Columbia, and to foreign countries, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said automobile accessories between and among the various States and Territories of the United States, the District of Columbia, and to foreign countries.

PAR. 3. That the respondents, Baltimore Hub-Wheel & Manufacturing Co. and the Holland-Baden-Ramsey Co., are, and for more than two years last past, have been wrongfully and unlawfully engaged in a combination or conspiracy among themselves unfairly to hamper and obstruct competitors engaged in interstate commerce in automobile accessories, by inducing and compelling or attempting to induce and compel manufacturers of automobile accessories, to refuse to recognize such competitors as jobbers or wholesalers entitled to buy from manufacturers at jobbers' or wholesalers' prices and terms and for that reason to refuse to sell them as such in interstate commerce, thus forcing them to buy at prices higher than those made by manufacturers to jobbers.

PAR. 4. That each of the respondents, is, and for more than two years last past has been wrongfully and unlawfully hampering and obstructing or attempting to hamper and obstruct certain competitors, engaged in interstate commerce, by inducing and compelling or attempting to induce and compel manufacturers of automobile accessories to refuse to recognize such competitors as jobbers or wholesalers entitled to buy from manufacturers at jobbers' or wholesalers' prices and terms, and for that reason to refuse to sell them as such

in interstate commerce, thus forcing them to buy at prices higher than those made by manufacturers to jobbers.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein wherein it is alleged that it has reason to believe that the above-named respondents, Baltimore Hub-Wheel & Manufacturing Co. and the Holland-Baden-Ramsey Co., had been and then were using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges therein; and the respondents having entered their appearance by J. Abner Saylor, their attorney, and having filed their answers admitting certain of the matters alleged and set forth in the complaint and denying others therein contained, and having signed and filed an agreed statement of facts wherein it is stipulated and agreed that the Commission shall forthwith proceed upon such agreed statement of facts to make and enter its report, stating its findings as to the facts and conclusions, and its order disposing of this proceeding without the introduction of testimony in support of the same, and the respondent having waived any and all rights to the introduction of such testimony, the Commission now makes its report and findings as to the facts and conclusions:

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent named herein as the Baltimore Hub-Wheel & Manufacturing Co. is in fact Robert C. Looch, trading as the Baltimore Hub-Wheel & Manufacturing Co., of which Robert C. Looch is sole proprietor; that the respondent, Holland-Baden-Ramsey Co., is now, and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland; that each respondent has its principal office and place of business in



the city of Baltimore in said State, and is now and for several years last past has been engaged in the purchase and sale of automobile accessories.

PAR. 2. That each of the respondents, Robert C. Loock, trading as Baltimore Hub-Wheel & Manufacturing Co., and the Holland-Baden-Ramsey Co., in the conduct of its business, enters into contracts of purchase of automobile accessories from manufacturers and others in the different States and Territories of the United States and the District of Columbia, causing the same to be transported to its place of business in Baltimore, Md., whence such accessories are sold by respondents and shipped to purchasers thereof; that as a part of the transaction of which said purchases and sales are also a part, such automobile accessories are continuously moved to, from, and among other States and Territories of the United States and the District of Columbia, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade and commerce in such automobile accessories between and among the various States and Territories of the United States and the District of Columbia.

PAR. 3. That each of the respondents, Robert C. Loock, trading as Baltimore Hub-Wheel & Manufacturing Co., and the Holland-Baden-Ramsey Co., in the conduct of its business as a jobber in automobile accessories in interstate commerce, as hereinbefore more particularly described, during the past two years has corresponded with a manufacturer of automobile accessories who sold such manufactured goods to jobbers and some retailers, allowing the same per cent of discount to each, and informed such manufacturer that unless it ceased allowing the same discount to said retailers as it allowed to respondent as a jobber, it would cease to purchase such automobile accessories from the said manufacturer, and that each respondent orally advised a representative of the aforementioned manufacturer that unless it ceased to allow the same discount to certain retailers as it allowed to the respondent as a jobber, it would cease to purchase such automobile accessories from the said manufacturer, and that the intent, purpose, and effect of the aforesaid oral representations and the aforesaid letters was

to compel the said manufacturer to cease extending the same discount to the aforesaid retailers that it extended to the respondents.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts in paragraph 3, and each and all of them are, under the circumstances set forth in the above findings as to the facts, unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondents, Baltimore Hub-Wheel & Manufacturing Co. and the Holland-Baden-Ramsey Co., had been, and then were using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges therein; and the respondents having entered their appearance by J. Abner Sayler, their attorney, and having filed their answers admitting certain of the matters alleged and set forth in the complaint and denying others therein contained, and having signed and filed an agreed statement of facts wherein it is stipulated and agreed that the Commission shall forthwith proceed upon such agreed statement of facts to make and enter its report, stating its findings as to the facts and conclusions, and its order disposing of this proceeding without the introduction of testimony in support of the same, and the respondent having waived any and all rights to the introduction of such testimony, and the Commission having made its report and findings as to the facts and conclusions upon the statement of facts, as agreed upon, and having concluded upon such findings as to the facts that the respondent, Balti-

more Hub-Wheel & Manufacturing Co., is in fact Robert C. Loock, trading as Baltimore Hub-Wheel & Manufacturing Co., and that the respondents have been guilty of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered,* That the respondents, Robert C. Loock, trading as Baltimore Hub-Wheel & Manufacturing Co., and the Holland-Baden-Ramsey Co., cease and desist from—

1. Embarrassing, harassing, hampering, or obstructing competitors engaged in interstate commerce in automobile accessories, and attempting to embarrass, harass, hamper, or obstruct such competitors, or stifling or suppressing competition or attempting to stifle or suppress competition by inducing and compelling, or attempting to induce and compel manufacturers of automobile accessories to refuse to recognize such competitors as jobbers or wholesalers entitled to buy from manufacturers at jobbers' or wholesalers' prices and terms, or from embarrassing, harassing, hampering, or obstructing competitors engaged in interstate commerce in automobile accessories, or attempting to embarrass, harass, hamper, or obstruct such competitors, or stifling or suppressing such competition, or attempting to stifle or suppress such competition by the use of any means similar in purport and effect to that above set forth.

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## FEDERAL TRADE COMMISSION *v.* NULOMOLINE CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 29.—April 15, 1919.

### SYLLABUS.

Where a corporation engaged in the manufacture and sale of invert sugar sirup—

(a) published statements to the effect—

(1) That prior to the beginning of the manufacture of its product, invert sugar was not produced on a commercial scale, because it was

impossible to produce inversion without the use of dangerous and expensive acids, alkalies, or enzymes;

- (2) That it was the only concern that had ever produced an acidless invert sugar on a commercial scale;
- (3) That its product differed fundamentally from all other known invert sugars, in as much as it was not inverted with the usual acids or enzymes nor put through any of the well known processes; and,
- (4) That its product was an acidless invert sugar and that no acid was used in its manufacture:

Whereas invert sugar had been made without the use of expensive and dangerous acids and chemicals, and sold commercially for many years before the corporation began making it; the sugar contained in its product was inverted with citric acid; and the process of making it differed in no material respect from that used by other manufacturers, except that it added a small amount of gum arabic not used by others;

- (b) Falsely claimed to have the exclusive right to, and monopoly of, the manufacture of invert sugar sirup;
- (c) Threatened to institute suits against competitors, and customers of competitors, for the alleged infringement of the process claimed in letters patent, held by it, such threats not being made in good faith, intending to bring such suits, but for the purpose of injuring said competitors and of intimidating them, their agents, customers, and prospective customers;
- (d) Made vague and indefinite threats against competitors, without disclosing the alleged rights claimed to be invaded with sufficient particularity to make it possible to act intelligently in reference thereto;
- (e) Informed a competitor that it was infringing a patent about to be issued; and, after the issuance of the patent, without making any inquiry into the process used by such competitor, threatened to begin suit unless the making of invert sugar was discontinued and the equipment and stock turned over to it, with the result that such competitor, although using a different acid, turned over its equipment and stock at cost and ceased to do further business; and
- (f) Notified a prospective competitor contemplating the manufacture of invert sugar commercially, that if it did so an action would be brought against it, such threats being so vague and indefinite as not to disclose whose alleged rights would be invaded, with the result that such prospective competitor abandoned its preparations and plans to engage in the manufacture of invert sugar:

*Held*, That such acts constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the Nulo-

moline Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Nulomoline Co., is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of New York in said State, and is now, and for nearly two years last past has been, engaged in the manufacture of inverted sugar sirup, generally known in trade as "invert sugar," and in the sale and shipment of such product to persons, corporations, or co-partnerships in other States and Territories of the United States and the District of Columbia under the trade name of "Nulomoline."

PAR. 2. That on the 7th day of February, 1916, one Noah W. Taussig, the president of the respondent, Nulomoline Co., made application to the United States Patent Office for letters patent upon a process of making inverted sugar sirup; that in said application and in affidavit thereafter made by him and which was filed with said application in support thereof the said Taussig stated that he was the original, first, and the sole inventor of said process; that thereafter and on the 25th day of April, 1916, upon the said application and the papers filed therewith letters patent of the United States were issued by the United States Patent Office to the said Noah W. Taussig for a process of making inverted sugar sirup; that the said letters patent were procured by the said Taussig for the use and benefit of the respondent, and that immediately upon the issuance thereof, the said Taussig assigned to the respondent all his right, title, and interest in said letters patent, and the respondent ever since has owned and still does own all right, title, and interest in the said letters patent; and the said Noah W. Taussig at the time of the

making of said application for letters patent was, and ever since has been, and still is, the president of the respondent; that the statements in said application for said letters patent and in said affidavit filed therewith to the effect that the said Taussig was the original, first, and sole inventor of inverted sugar sirup were false, and misleading to the officers of the Government in charge of the administration of the United States Patent Office; that, as a matter of fact, the said Taussig was not the original, first, or sole inventor of inverted sugar sirup as the said Taussig well knew when he made such application and filed said affidavit, and he also knew at the same time, what is a fact, to wit, that the use and existence of said process had been for a long time prior thereto a matter of common knowledge to sugar technologists and to manufacturers in various industries; and that with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of inverted sugar sirup in interstate commerce the respondent ever since the issuance of said letters patent has claimed, and is now claiming, to have the exclusive right to, and monopoly of, the manufacture of inverted sugar sirup, and of the process of manufacturing same, as set forth in said letters patent, and has ever since that time upon numerous occasions threatened, and still does threaten, to institute suit against its competitors and manufacturers of inverted sugar sirup for infringement of its said letters patent.

PAR. 3. That the respondent, Nulomoline Co., with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of inverted sugar sirup in interstate commerce, and with the intent and purpose of intimidating its competitors, has upon numerous occasions since the issuance of said letters patent, threatened manufacturers of inverted sugar sirup, and persons preparing to engage in the manufacture of inverted sugar sirup, with suits for infringement of respondent's said letters patent; that when such threats were made respondent had no intention of instituting any such suit, and in fact has not instituted any such suit.

PAR. 4. That the respondent, Nulomoline Co., with the intent, purpose, and effect of stifling and suppressing com-

petition in the manufacture and sale of inverted sugar sirup in interstate commerce, has upon numerous occasions since the issuance of said letters patent by it threatened to institute against the customers of its competitors suits for infringing its alleged rights under a certain process patent and because they are dealing in the product of a manufacturer of inverted sugar sirup whom the respondent alleged was wrongfully using a secret process of the respondent in the manufacture thereof.

PAR. 5. That the respondent, Nulomoline Co., with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of inverted sugar sirup in interstate commerce, and with the intent and purpose of intimidating customers and prospective customers of its competitors, ever since the issuance of said letters patent, has circulated among the dealers handling the products of its competitors, by means of verbal and written communications, threats that it will institute suits against customers of its competitors, and that such threats were and are couched in such vague, indefinite, and general terms as not to convey any specific character of alleged invasion of the respondent's rights.

PAR. 6. That the respondent, Nulomoline Co., with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of inverted sugar sirup, since the issuance of said letters patent has on numerous occasions published and caused to be published in trade papers and other publications false and misleading advertisements, in that it therein represented that in the manufacture of its product, nulomoline, no acids are used, and that the same is not inverted by any of the usual processes.

PAR. 7. That the respondent, Nulomoline Co., with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the manufacture and sale of inverted sugar sirup, has at various times since the issuance of said letters patent to it published and caused to be published in trade papers and other publications, false and misleading advertisements, in that it therein represented that prior to the manufacture and sale of its product, nulomoline,

inverted sugar sirup could not be produced without the use of expensive and dangerous acids, such statements being calculated to lead the trade and general public to believe that all inverted sugar sirups not made by the respondent's process contained dangerous acids.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, Nulomoline Co., has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding in respect thereto would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance and having duly filed its answer admitting certain of the allegations of the complaint and denying certain others thereof, particularly those alleging that respondent has been and is violating the provisions of the act of Congress above named, and having in addition thereto interposed certain affirmative allegations as a defense which upon motion duly made before the Federal Trade Commission were stricken from respondent's answer, and the Commission having offered testimony in support of the charges of said complaint, and a stipulation having thereafter been duly entered into between the respondent and the Commission, wherein it was agreed that the case of the Federal Trade Commission be closed without the introduction of any further evidence and, without withdrawing any of the denials or defenses contained in its answer, that the respondent waive the taking of any testimony in its behalf in defense in this proceeding and consent to the closing of the case and that the Federal Trade Commission might proceed forthwith to make its findings and order disposing of these proceedings, and the Commission having duly considered the record and being fully advised in the premises now makes this, its report and findings as to the facts and conclusions.



## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. The respondent, Nulomoline Co., is a corporation organized under the laws of the State of New York during the year 1910, having its principal office and place of business in the city of New York, and since its organization has been engaged in the manufacture of invert sugar and has made sales and shipments of such products to persons, corporations and copartnerships in other States and Territories of the United States and the District of Columbia, under the trade name of "Nulomoline."

PAR. 2. That Noah W. Taussig, who was then and ever since has been president of the respondent, Nulomoline Co., in the year 1910 sold and delivered to the respondent a certain process for making invert sugar as described in the patent hereinafter mentioned under which process, together with modifications, compounds, derivatives, and variations thereof which respondent claims to have adopted and used, respondent ever since has been and still is engaged in manufacturing and selling in commerce the articles sold by respondent as nulomoline; that nothing in these findings shall be taken to contradict or admit the correctness of the claim of the respondent regarding modifications, compounds, derivatives, and variations.

PAR. 3. That invert sugar is an article well known in commerce and for commercial use is manufactured by dissolving refined cane sugar in water, about 20 per cent of water being contained in the solution, adding a small portion of acid, usually an organic acid such as tartaric, citric, or phosphoric, and heating the solution until the temperature is raised to the point of boiling or thereabouts, and maintaining the temperature at about the point of boiling until the chemical structure of the sugar is so changed that a substantial part of the molecules of sucrose are converted into molecules known in sugar technology as levulose and dextrose, and, if a white or colorless product is desired, then suddenly cooling the solution to prevent discoloration.

PAR. 4. That the chemical action of acid and heat when applied to a solution of refined sugar as described in paragraph 3 has been well known by chemists and sugar technologists for many years. That while it had previously

been known for many years that the action of heat and acid when applied to sugar as above described changed the sugar from a crystallizable sugar to a noncrystallizable sugar, yet the chemical change which caused this alteration in the character of the sugar was not understood until discovered about the year 1830 by a French chemist, Dubrunfaut, who then found that cane sugar was thereby separated or split up into two other sugars, and he named these two sugars "dextrose" and "levulose." That in 1836 another French physicist, Biot, invented an optical instrument known as the "polariscope." Biot found that by placing a tube filled with a solution of cane sugar in the polariscope and passing rays of light through it, the rays of light were refracted and rotated to the right, or "plus," as he called it, and that after treating the sugar with acid as above described that the rotation of the rays of light was to the left, or "minus." The optical properties of the solution after treatment by acid and heat being reversed, he called the treatment the "process of inversion," from which the name "invert sugar" was introduced about the year 1836. About the year 1843 another chemist named Mitscherlich found that inversion of sugar could be accomplished by use of a very small amount of acid, as small as one hundredth of 1 per cent, when the solution was subjected to a high temperature. The acids mentioned by him in connection with this process were inorganic, and powerful organic acids, such as "oxalic" or "phosphoric." Dubrunfaut afterwards discovered, about the year 1856, that by the use of organic acid such as tartaric, oxalic, or phosphoric, to the amount of one hundredth of 1 per cent with relation to the sugar there remained no secondary reaction such as was originally produced by strong mineral acids; that the sugar so treated resulted in a mass of honey-like consistency and that it would be taken for pure white honey. About the year 1885 Herzfeld, who made a study of invert sugar, used a small amount of organic acids, among others, citric and tartaric acid, in water and heated the solution to about 230° to 235° F., and found that by using this high temperature the result produced was very likely to be discolored through the caramelization or de-

composition of the levulose. In a work gotten up by Herzfold and published in 1887 he described the different processes that had been used for manufacturing invert sugar, and the uses of invert sugar in preserving fruits and in the manufacture of wines and for other purposes. The method of Herzfold for the manufacture of invert sugar to be used as artificial honey was to make a solution of sugar with about 23 per cent of water and eleven one-hundredths of 1 per cent of tartaric acid, with relation to the dry weight of sugar and to maintain a boiling temperature until the solution acquired a golden yellow color, this color being required to make the product look like honey. Later it was discovered that this discoloration might be checked as soon as or before it became perceptible by rapidly cooling the sugar solution as soon as inversion should have proceeded sufficiently. The process of rapidly cooling is one of the features covered by the patent issued in 1889 by Great Britain to Dr. Alfred Wohl and Dr. Alexander Kollrepp. This patent mentions the different acids which may be used, specifying the respective proportions and temperatures required to produce inversion of various solutions of sugar. Among the organic acids it mentions citric and tartaric and specified the proportion of the acids which may be used, as 0.045 per cent of tartaric and 0.06 per cent of citric acid, when the solution to be treated was an 80 per cent solution of sugar. The patent specified that with the proportion above named the inversion may be completed by employing a temperature of 100 to 110° C. and digesting the solution for an hour.

PAR. 5. That the respondent has published or caused to be published statements and representations as follows: (a) That nulomoline is the only invert sugar manufactured in the United States; (b) that until about 1910 the artificial manufacture of invert sugar did not get beyond the laboratory, inasmuch as it was found impossible to produce inversion without the use of dangerous and expensive acids, alkalis, or enzymes; (c) that the Nulomoline Co. is the only concern that has ever produced an acidless invert sugar on a commercial scale; (d) that nulomoline differs fundamentally from all other invert sugars known to com-

merce and to scientific men, inasmuch as it is not inverted with the usual acids or enzymes, nor is it put through any of the well-known processes; (e) that by a special process the dextrose is kept in suspension and the final congealed mass is of the appearance of lard with the proportions of dextrose and levulose the same at the top as at the bottom of the barrel; (f) that nulomoline is an acidless invert sugar; (g) that there is absolutely no acid used in its manufacture; (h) that before the manufacture of nulomoline invert sugar could not be produced without the use of expensive and dangerous acids.

PAR. 6. That invert sugar has been manufactured without the use of expensive and dangerous acids and chemicals and sold commercially for many years. That it was so made in France in the days of Maumone shortly after 1869 by the use of simple acids; that an invert sugar, water white so far as possible to perceive, has been made commercially in this country since about 1893. That the sugar contained in nulomoline is inverted with citric acid; that in nine specimens of nulomoline sold in commercial channels it was found on analyses being made that there was an average of 0.0533 $\frac{1}{2}$  per cent of acid calculated as citric; that the process of inverting the sugar contained in nulomoline differs in no material respect from other processes used in the manufacture commercially of invert sugars except that one-seventh of 1 per cent of gum arabic is added to the solution; but the effect of this small amount of gum arabic is probably negligible for the following reasons, viz: If the gum arabic has completely combined with the small proportion of citric acid with which the lime present would make it combine, there would be no gum arabic left; if the gum arabic had risen to the surface all of it might have been skimmed off, some might be left mechanically; after a complete reaction had taken place between citric acid and gum arabic, gum arabic would no longer be present in the solution, but there would be a mixture of araban, arabcense, some of the other sugars, and probably gum arabic acid and the majority of the calcium present would be present as calcium citrate.

PAR. 7. That on April 25, 1916, Letters Patent No. 1,181,086 were issued by the United States Patent Office to Noah W. Taussig, covering said process sold by the said Noah W. Taussig to the respondent Nulomoline Co. in 1910. That since the issuance of said letters patent respondent became and still is the owner thereof.

PAR. 8. That in the year 1916 the respondent made vague or indefinite threats against a competitor engaged in the manufacture or business of dealing in invert sugar sirup, which did not disclose to such manufacturer against whom the threat was made the right which respondent claimed had been or was about to be invaded with sufficient particularity to enable him to either desist or abstain from such act or intelligently consider the justice of the threat.

PAR. 9. That in the year 1916, respondent informed another competitor that in making invert sugar it was infringing a patent for which respondent had applied and which respondent expected to have issued to it soon; that after the issuance of said patent respondent threatened said competitor that it would commence suit against it unless the competitor did stop making invert sugar, but that respondent would refrain from such suit if such competitor would cease making invert sugar and turn over its equipment and stock of goods to the respondent; that as a result the said competitor dismantled its plant and turned over its equipment and stock of goods to the respondent at cost price and ceased to do further business. That said competitor was not using the same acid as an inverting agent as that used by respondent; that respondent made no inquiry of said competitor as to the method by which said competitor was inverting its sugar, but asserted that by making invert sugar such competitor was infringing respondent's letters patent.

PAR. 10. That in the year 1916, the attorney for the respondent, acting within the scope of his authority as such attorney, notified a prospective competitor which was making arrangements to manufacture invert sugar commercially, not to embark upon the enterprise of infringing upon the rights of the respondent and that action would be taken against that concern if it should proceed; that such threat was so vague and indefinite as not to disclose to the party

against whom it was made the right which respondent claimed was about to be invaded; that as a result of said threat, said prospective competitor feared that it would be subjected to litigation if it proceeded to make invert sugar and accordingly abandoned its preparation and plan so to do.

PAR. 11. That in the year 1916 one of the officers of the respondent stated to a trade representative and purchasing agent that if a customer of a competitor of the respondent, which customer was a member of the trade organization represented by such purchasing agent, continued to buy invert sugar from such competitor, such competitor was liable to be prosecuted.

#### CONCLUSIONS.

That the acts and conduct set forth in paragraphs 5, 8, 9, 10, and 11 are and each of them is, under the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein and respondent having entered its appearance and having duly filed its answer admitting certain allegations of the complaint and denying certain others thereof, particularly those alleging that respondent has been and is violating the provisions of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and having in addition thereto interposed certain affirmative allegations as a defense which, upon motion being made before the Federal Trade Commission, were stricken from respondent's answer, and the Commission having offered testimony in support of the charges of said complaint, and a stipulation having thereafter been duly entered into between the respondent and the Commission wherein it was agreed that the case of the Federal Trade Commission be closed without the introduction of any further evidence and,

without withdrawing any of the denials or defenses contained in its answer, that the respondent waive the taking of any testimony in its behalf in defense in this proceeding and consent to the closing of the case and that the Federal Trade Commission might proceed forthwith to make its findings and order disposing of these proceedings, and the Commission on the date hereof having made and filed its report containing its findings as to the facts and its conclusions that respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered,* That the respondent, the Nulomoline Co., and its officers, directors, agents, servants, employees, and representatives, each and all of them, cease and desist from, directly or indirectly—

1. Claiming to have the exclusive right to the manufacture of invert sugar sirup.

2. Claiming to have the exclusive monopoly of the manufacture of invert sugar sirup.

3. Threatening to institute suits against other manufacturer or manufacturers of invert sugar sirup for the infringement of the process claimed in respondent's letters patent without in good faith intending to institute such suit or suits, and in fact following up such threat or threats with suit or suits brought within a reasonable time, unless such acts may be desisted from.

4. Threatening to institute suit or suits against person or persons preparing to engage in the manufacture of invert sugar sirup, for contemplated infringement of respondent's patent without reason for believing in good faith that such person or persons intend infringing the process claimed in respondent's letters patent.

5. Making threats against others engaged in the manufacture of or business of dealing in invert sugar sirup, or against others contemplating or preparing to engage in the manufacture of or business of dealing in invert sugar sirup with vague or indefinite threats which do not disclose to the party against whom such threat is made the right which respondent claims

has been or is about to be invaded with sufficient particularity to enable him to either desist or abstain from such act or intelligently consider the justice of such threat.

6. Making threats against customer or customers of competitors to institute suit or suits for infringement of respondent's process patent.

7. Making threat or threats against customer or customers of competitors, except in good faith, to restrain them from some particular act or acts therein described with such particularity as to render possible intelligent action by such customer or customers upon such threat or threats.

8. Publishing or causing to be published in trade papers, circulars, or other publications, or by public addresses or otherwise, articles, advertisements, or other representations that in the manufacture of nulomoline no acids or chemicals are used and that the sugar contained in nulomoline is not inverted by any of the usual processes, or that prior to the manufacture of nulomoline invert sugar could not be produced without the use of expensive and dangerous acids or chemicals, or suggesting or intimating that other invert sugars contain dangerous acids. Nothing, however, in this paragraph shall interfere with the assertion of any fact which respondent may be able to establish, nor the assertion in good faith of rights claimed by respondent under Letters Patent No. 1,181,086, such latter assertion to be made consistently with the provisions of paragraph 3 hereof.

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FEDERAL TRADE COMMISSION *v.* CLAYTON F. SUMMY CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER  
26, 1914.

Docket No. 158.—April 15, 1919.

SYLLABUS.

Where a corporation engaged in the publication and sale of sheet music—

- (a) Sold the same to dealers, and by means of a "trade price list" and a "schedule of discounts to teachers," indicated the minimum prices at which such sheet music was to be resold to various classes of purchasers; and



(b) Refused to sell its sheet music to dealers who resold same below the specified minimum prices upon as favorable terms as were given to dealers who adhered to such prices:

*Held*, That a scheme of resale price maintenance, substantially as described, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that the Clayton F. Summy Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondent, Clayton F. Summy Co. is now and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business located at the city of Chicago, in said State, and now and for more than two years last past engaged in the publishing and sale of sheet music among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business the respondent produces and publishes its sheet music in the city of Chicago, State of Illinois, and then sells and transports the same to numerous customers located in different States of the United States, the Territories thereof, and the District of Columbia, and that after such sheet music is so produced or published it is continuously moved to, from, and among other States and Territories of the United States, and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in such sheet music between

and among the various States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That the respondent, Clayton F. Summy Co., has adopted and maintains a system of fixing prices at which its products shall be resold by such jobbers and wholesalers, with the effect of securing the trade of jobbers and wholesalers and of enlisting their active cooperation in enlarging the sale of its price-maintained product to the prejudice of competitors who do not fix and require the maintenance of the resale prices of their product, and with the effect of eliminating competition in price among the jobbers and wholesalers of their right to sell such goods at such prices as they may deem adequate and warranted by their selling efficiency, and with other effects; and that for the purpose of maintaining said standard resale prices and of inducing and compelling its customers to maintain and keep such standard prices, the respondent for more than one year last past has refused and is still refusing to sell its products to customers or dealers who will not agree to maintain such specified standard resale prices or who do not resell such products at the specified standard selling prices so fixed and determined by the respondent as aforesaid.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, Clayton F. Summy Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect of such alleged violation of section 5 of the act of September 26, 1914, would be to the interest of the public, and fully stating its charges, and the respondent having entered its appearance by Burry, Johnstone & Peters, its attorneys, and having duly filed its answer admitting certain of the allegations of said complaint and denying certain others thereof, and said

respondent and its attorneys having signed and filed an agreed statement of facts wherein and whereby it was duly stipulated and agreed that the facts therein recited are the facts in this proceeding, and that the same shall be taken by the Federal Trade Commission as the evidence herein, and shall be taken in lieu of the testimony in support of said complaint; and said respondent, Clayton F. Summy Co., and its said attorneys, having expressly waived and relinquished any and all right to the introduction of testimony, and due notice of the submission of this proceeding to the Federal Trade Commission for final disposition on the pleadings and on said agreed statement of facts having been duly served on said Burry, Johnstone & Peters, attorneys for said respondent, on March 27, 1919, and there having been no appearance or opposition on behalf of said respondent on the day named in said notice; the Commission having duly considered the record, and being fully advised in the premises, now makes its report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Clayton F. Summy Co., is now and for more than two years last past has been a corporation, existing and doing business under and by virtue of the law of the State of Illinois, having its principal office and place of business located at the city of Chicago, in said State.

PAR. 2. That the respondent, Clayton F. Summy Co., is now and for more than two years last past has been engaged in the business of publishing and selling sheet music generally in commerce throughout the States of the United States, Territories, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 3. That the respondent, Clayton F. Summy Co., in the conduct of its business for more than two years last past has made a practice of issuing from time to time a "Trade Price List" and a "Schedule of Discounts to Teachers," which schedules indicate the minimum price at which particular selections of sheet music are to be sold at retail, to teachers, or at wholesale.

PAR. 4. That the respondent, Clayton F. Summy Co., has within two years last past refused to sell its sheet music to dealers, who resold the same below the specified minimum prices set forth by respondent as aforesaid, upon as favorable terms as said respondent has given to dealers who adhered to such schedules.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings are, and each of them is, under the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, Clayton F. Summy Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect of such alleged violation of section 5 of the act of September 26, 1914, would be to the interest of the public, and fully stating its charges, and the respondent having entered its appearance by Burry, Johnstone & Peters, its attorneys, and having duly filed its answer admitting certain of the allegations of said complaint and denying certain others thereof, and said respondent and its attorneys have signed and filed an agreed statement of facts wherein and whereby it was duly stipulated and agreed that the facts therein recited are the facts in this proceeding, and that the same shall be taken by the Federal Trade Commission as the evidence herein, and shall be taken in lieu of testimony in support of said complaint; and said respondent, Clayton F. Summy Co., and its said attorneys, having expressly waived and relinquished any and all right to the introduction of

testimony, and due notice of the submission of this proceeding to the Federal Trade Commission for final disposition on the pleadings and on said agreed statements of facts having been duly served on said Burry, Johnstone & Peters, attorneys for said respondent, on March 27, 1919, and there having been no appearance or opposition on behalf of said respondent on the day named in said notice; and the Commission on the day hereof having made and filed its report containing its findings as to the facts and its conclusions that respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered:* That respondent, Clayton F. Summy Co., and its officers, directors, agents, servants, and employees cease and desist from, directly or indirectly, indicating the minimum price at which selections of sheet music published by said respondent are to be sold at retail, to teachers, or at wholesale, according to any system of prices fixed or established by respondent; and from refusing to sell its sheet music to any dealer or dealers upon as favorable terms as said respondent gives to any other dealer or dealers, by reason of the fact that said first-named dealer or dealers has resold sheet music purchased from respondent at prices not satisfactory to said respondent.

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### FEDERAL TRADE COMMISSION *v.* AUTO STROP SAFETY RAZOR CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26,  
1914, AND THE ALLEGED VIOLATION OF SECTION 2 OF THE ACT  
OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket No. 172.—April 15, 1919.

#### SYLLABUS.

Where a manufacturer of razor blade strops, safety razors, and razor blades—

- (a) Sold the same to jobbers, wholesalers, and retailers and indicated the resale prices at which the same should be resold, and endeavored to have such prices maintained; and,

(b) Refused to sell its products to those who resold the same below indicated prices:

*Held*, That a scheme of resale price maintenance, substantially as described, constituted an unfair method of competition, in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

I. The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Auto Strop Safety Razor Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondent, Auto Strop Safety Razor Co., is now, and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business located at the city of New York, in said State, and is now and for more than two years last past has been engaged in the business of selling razor blade strops, safety razors, and razor blades throughout the various States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business the respondent company moves and distributes its razor blade strops, safety razors, and razor blades to, from, and among the State of New York and other States and Territories of the United States, and there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in such razor blade strops, safety razors, and razor blades between and among the various States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That with the intent, purpose, and effect of stifling and suppressing competition in the marketing, selling, and reselling of its razor blade strops, safety razors, and razor blades, and as a means of securing the trade of jobbers, wholesalers, and retailers, and of enlisting their active cooperation in enlarging the sale of its razor blade strops, safety razors, and razor blades, to the prejudice and injury of its competitors; and with the purpose of eliminating competition in the selling price among the various dealers in these razor blade strops, safety razors, and razor blades, and thereby depriving the dealers of their freedom to sell razor blade strops, safety razors, and razor blades at prices which in their judgment would be warranted by trade conditions, and for the purpose of preventing competitors of the dealers who purchase its razor blade strops, safety razors, and razor blades from entering into free competition in the sale and distribution of products sold and distributed by the Auto Strop Safety Razor Co., and for other purposes, the respondent, Auto Strop Safety Razor Co., has adopted and maintained a system of fixing prices at which its products should be resold by its jobbers, wholesalers, and retailers, and for the purpose of maintaining such standard resale prices, and of maintaining and promoting its system of price fixing, and of inducing and compelling its customers to maintain and keep such prices and system of price fixing and for the purpose of preventing those who do not maintain such prices and system of price fixing from entering into free and regular, unsuppressed, and unhindered competition with purchasers who do maintain such standard prices and system of price fixing, the respondent for more than six months last past has required its purchasers to agree to maintain such standard selling prices and system of price fixing, and has refused, and is still refusing, to sell these products to customers or dealers who do not agree to maintain such standard prices and system of price fixing or who do not resell such products at the specified standard prices which are fixed and determined by the respondent as aforesaid.

II. The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Auto Strop Safety Razor Co., hereinafter referred to as respondent, has been, and is violating the provisions of sec-

tion 2 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, the Auto Strop Safety Razor Co., is a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal office and place of business in the city of New York, in said State, and is now, and was at all times hereinafter mentioned, engaged in selling razor-blade strops, safety razors, and razor blades, and in the shipment of such commodities to persons, copartnerships, and corporation in other States, Territories, and the District of Columbia.

PAR. 2. That the respondent, Auto Strop Safety Razor Co., for more than six months last past, in the course of interstate commerce, has discriminated in price, and is now discriminating in price, between different purchasers of its razor-blade strops, safety razors, and razor blades, which products are sold for use, consumption, or resale within the United States, and the Territories thereof, or the District of Columbia, and that the effect of such discrimination may be and is to substantially lessen competition or tend to create a monopoly.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, Auto Strop Safety Razor Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and has been and is violating the provisions of section 2 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and fully stating its charges in that respect, and the respondent



having entered its appearance by Walter H. Liebmann, its attorney, and having filed its answer denying the various allegations of the complaint, and having signed and filed an agreed statement of facts, wherein and whereby it was stipulated and agreed that the Commission shall forthwith proceed upon such agreed statement of facts to make and enter its report stating its findings as to the facts, and its order disposing of this proceeding without the introduction of testimony in support of the same and waiving any and all right to the introduction of such testimony, the Commission now makes its report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, the Auto Strop Safety Razor Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at the city of New York, State of New York, and is now, and for more than two years last past has been, engaged in the business of manufacturing and selling razor-blade strops, safety razors, and razor blades throughout the various States, Territories, and the District of Columbia, of the United States, in direct competition with other persons, firms, co-partnerships, and corporation similarly engaged.

PAR. 2. That in the conduct of its business the respondent company moves and distributes its razor blade strops, safety razors, and razor blades to, from, and among the several States, Territories, and the District of Columbia, of the United States, and that there is continuously, and has been at all the times hereinafter mentioned, a constant current of trade and commerce in such razor blade strops, safety razors, and razor blades between and among the several States, Territories, and the District of Columbia, of the United States.

PAR. 3. That the quantity of razor blade strops, safety razors, and razor blades sold and distributed as aforesaid by respondent has been and is substantially, and that the same forms, an important item of commerce among the several States, Territories, and the District of Columbia, of the United States.

PAR. 4. That respondent sells and distributes its products directly through jobbers, wholesalers, and retailers, and maintains no distributing agencies.

PAR. 5. That for more than one year prior to the 16th day of July, 1918, respondent in selling its said products to such jobbers, wholesalers, and retailers, indicated the resale prices at which same should be resold and endeavored to have those prices maintained.

PAR. 6. That for more than one year prior to the 16th day of July, 1918, respondent refused to sell and did not sell its said products to jobbers, wholesalers, or retailers who resold the same below such indicated prices.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts are, under the circumstances herein set forth, unfair methods of competition in interstate commerce and in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondent having entered its appearance by Walter H. Liebmann, its attorney, and having filed its answer and agreed statement of facts, wherein it was stipulated that the Commission shall forthwith proceed upon said agreed statement of facts to make and enter its report stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same and waiving any and all right to the introduction of such testimony, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made part hereof: Now, therefore,

*It is ordered:* That respondent, The Auto Strop Safety Razor Co., of New York, and its officers, directors, agents, servants, and employees, cease and desist from, directly or indirectly—

(1) Indicating to dealers the prices for which its razor blade strops, safety razors, and razor blades shall be resold;

(2) Refusing to sell to jobbers, wholesalers, and retailers who fail to adhere to such prices;

(3) Carrying out a price maintenance policy by any other means.

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FEDERAL TRADE COMMISSION *v.* GENEVIEVE SYMONDS, SOLE TRADER UNDER THE NAME AND STYLE OF AUTO SURPLUS STOCK CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 191.—April 15, 1919.

SYLLABUS.

Where a firm dealing in automobile supplies, parts, and accessories knowingly adopted and used a firm name so similar to one already in use by a competitor that it resulted in confusion on the part of customers and the public as to the identity of the respective firms:

*Held*, That the adoption and use of a similar firm name, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Bert Symonds, Genevieve Symonds, and Irving Symonds, copartners, doing business under the firm name and style of Auto Surplus Stock Co., all of whom are hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this

complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondents, Bert Symonds, Genevieve Symonds, and Irving Symonds, are copartners doing business under the firm name and style of Auto Surplus Stock Co., having their principal office and place of business located at the city of Chicago, State of Illinois, and are now, and were at all times hereinafter mentioned, engaged in the business of selling automobile supplies, parts, and accessories throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business, respondents purchase the aforesaid automobile supplies, parts, and accessories in the various States of the United States and the Territories thereof, and transport the same through other States and Territories in and to the city of Chicago, State of Illinois, which are from there sold, by means of catalogues and circulars, and shipped to dealers in different States and Territories of the United States and the District of Columbia, and there is continually, and has been at all times herein mentioned, a constant current of trade and commerce in said automobile supplies, parts, and accessories between and among the various States and Territories of the United States, the District of Columbia, and foreign countries, and especially from other States and Territories of the United States, the District of Columbia, and foreign countries to and through the city of Chicago, State of Illinois, and from there to and through other States and Territories of the United States, the District of Columbia, and foreign countries.

PAR. 3. That L. H. Smith and S. N. Dover are copartners, having their principal office and place of business located at the city of Chicago, in the State of Illinois, and for the three years last past have been engaged in the business of selling automobile supplies, accessories, and parts in interstate commerce under the firm name and style of Surplus Auto Supply Co., and that such trade name is and was well known to the respondents.

PAR. 4. That the respondents within the year last past began the business of selling automobile supplies, parts, and accessories as aforesaid, and with the purpose, intent, and effect of stifling and suppressing competition in interstate commerce in the sale of such supplies, parts, and accessories has adopted the firm name and style of Auto Surplus Stock Co., advertising and displaying the said firm name in catalogues, circulars, and other advertising matter, all of which simulation is designed and calculated to, and does deceive and mislead the trade and general public and cause purchasers to believe that respondents' firm is one and the same as that of the aforesaid copartners trading as the Surplus Auto Supply Co.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having duly issued and served upon the above-named respondent its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, Genevieve Symonds, doing business under the name and style of Auto Surplus Stock Co., has been and now is using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and fully stating its charges in that respect, and the said respondent having entered appearance and filed answer to said complaint of the Commission and the said respondent thereafter having signed and filed an agreed statement of facts, wherein it is stipulated and agreed that the Commission shall forthwith proceed upon such agreed statement of facts to make and enter its order disposing of this proceeding without the introduction of testimony in support of the same; the respondent forever waiving and relinquishing any and all right to the introduction of such testimony.

PARAGRAPH 1: That the respondent is Genevieve Symonds, and that said respondent is now and has within the year last past been engaged in business as the sole trader, under the name and style of Auto Surplus Stock Co., and that

during said time said respondent's principal place of business has been located at the city of Chicago, in the State of Illinois; and that said respondent is now, and was at all times hereinafter mentioned, engaged in the business of selling automobile supplies, parts, and accessories throughout the various States and Territories of the United States in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, in the course and conduct of business, purchases the aforesaid automobile supplies, parts, and accessories in the various States and Territories of the United States and transports the same through other States and Territories of the United States in and to the city of Chicago, State of Illinois, which are from there sold, by means of catalogues and circulars, and shipped to dealers in different States and Territories of the United States, and there is constantly and has been at all times herein mentioned a constant current of trade and commerce in said automobile supplies, parts, and accessories between and among the various States and Territories of the United States, and especially from other States and Territories of the United States to and through the city of Chicago, State of Illinois, and from there to and through other States and Territories of the United States.

PAR. 3. That L. H. Smith and S. N. Dover are copartners, having their principal office and place of business located at the city of Chicago, in the State of Illinois, and for three years last past have been engaged in the business of selling automobile supplies, parts, and accessories in interstate commerce under the firm name and style of Surplus Auto Supply Co., and that such trade name is and was well known to respondent.

PAR. 4. That about January 1, 1918, the respondent began and has up to the present time continued to sell said automobile supplies, parts, and accessories in interstate commerce as aforesaid, under the said trade name of Auto Surplus Stock Co., not incorporated; that at the time this trade name was selected by respondent, she well knew that a competing and established business was being conducted by said L. H. Smith and S. N. Dover, copartners, operating under

the name of Surplus Auto Supply Co., in the next block on the same street in the said city of Chicago and State of Illinois; that from time to time said copartners as Surplus Auto Supply Co. has issued and distributed various catalogues of automobile parts and accessories throughout the various States of the United States of America under said trade name of Surplus Auto Supply Co. A true copy of one of said catalogues so distributed by said Surplus Auto Supply Co. is hereto attached and marked Exhibit "A" and made a part of this record; that in the course of business as aforesaid said Surplus Auto Supply Co. used certain cards and stationery, true copies of which are attached hereto, marked Exhibit "H-2," Exhibit "No. 4," and Exhibit "No. 6" and made a part of this record; that said respondent being fully aware of the distribution of said catalogues and the use of said stationery by said Surplus Auto Supply Co. as aforesaid, issued and distributed throughout the various States of the United States of America a catalogue under the name of Auto Surplus Stock Co., not incorporated, true copies of which are filed herein and described as Exhibit "No. 7" and Exhibit "No. 8" and made a part of this record; that respondent used cards and stationery in the course of business with the said named Auto Surplus Stock Co. and that true copies thereof are filed herein and described as Exhibit "No. 1," Exhibit "No. 3" and Exhibit "No. 5" and made a part of this record; that by reason of the similarity of said trade names, certain confusion has arisen among purchasers buying automobile parts and accessories from both and each of said parties; that by reason of the foregoing, there has been some confusion in the delivery of the United States mail addressed to each of said parties, in that mail intended for the said Surplus Auto Supply Co. has been delivered to the respondent; that by reason of said similarity of trade names more confusion is liable to reoccur in the future; that the similarity in said trade name is such as to deceive and mislead prospective customers of each other and does deceive and mislead the trade and general public and cause persons to believe that respondent's firm is one and the same as that of the aforesaid copartners trading as Surplus Auto Supply Co.

## CONCLUSIONS.

That the said methods of competition set forth in the foregoing findings as to the facts and each and all thereof under the circumstances herein set forth constitute unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the said act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having duly issued and served upon the above-named respondent its complaint herein on the 30th day of September, 1918, wherein it alleged that it had reason to believe that said respondent has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and fully stating its charges in that respect, and the said respondent, having duly entered appearance and filed answer to said complaint of the Commission, and the said respondent thereafter being desirous of expediting the disposition of this matter, entered into an agreed statement of facts wherein it is stipulated and agreed that the Commission shall forthwith proceed upon said statement of facts to make and enter its report stating its findings as to the facts and its conclusions, and to enter its order disposing of this proceeding without the introduction of testimony in support of the same, said respondent forever waiving and relinquishing any and all right to the introduction of such testimony and the Commission having made and filed its report stating its findings as to the facts and its conclusions that the respondent, Genevieve Symonds, doing business under the name and style of Auto Surplus Stock Co., has violated the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to



define its powers and duties, and for other purposes," said report being hereby referred to and made a part hereof: Now, therefore,

*It is ordered:* That the respondent, Genevieve Symonds, doing business under the name and style of Auto Surplus Stock Co., city of Chicago, State of Illinois, and respondent's agents, representatives, servants, and employees forever cease and desist from—

Using the name Auto Surplus Stock Co. as a trade name and all words tending to indicate that the business of the respondent is the same as the business of the Surplus Auto Supply Co., or from representing that the business of the respondent is owned, controlled, or managed by the Surplus Auto Supply Co., and from using the name Auto Surplus Stock Co. as applied to selling, offering for sale, or advertising automobile supplies, parts, and accessories.

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### FEDERAL TRADE COMMISSION *v.* ARMOUR & CO. AND FARMERS' COOPERATIVE FERTILIZER CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 231.—April 15, 1919.

#### SYLLABUS.

Where a corporation engaged in the manufacture and sale of fertilizers—

- (a) Owned the capital stock of a subsidiary corporation engaged in the same business and held the same out to be an independent farmers' cooperative company;
  - (b) Through such subsidiary controlled the purchase of raw materials used by the reputed farmers' cooperative company and the prices at which its products were sold; and
  - (c) Took no steps to disclose to the trade or purchasing public the truth regarding the actual ownership and control of such subsidiary:
- Held,* That the concealed operation of a subsidiary, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that Armour & Co. and Farmers' Cooperative Fertilizer Co., hereinafter referred to as respondents, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Armour & Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at the city of Chicago, in said State, now and at all times hereinafter mentioned, engaged, directly and through its subsidiary and owned and controlled concerns, in the manufacture, purchase, and sale of fertilizing materials and fertilizers generally in commerce throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged; that the respondent, Farmers' Cooperative Fertilizer Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business located at the city of Richmond, in said State, now and at all times hereinafter mentioned, engaged in the purchase and sale of fertilizing materials generally in commerce throughout the United States, the Territories thereof, the District of Columbia, and foreign countries in direct competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 2. That in the conduct of their business, respondents purchase large amounts of raw materials in different States of the United States, and cause the same to be transported through other States to its factories where they are made or

manufactured into the finished product and then sold and shipped to purchasers thereof in the various States and Territories of the United States, the District of Columbia, and foreign countries; that after such products are so manufactured, they are continuously moved to, from and among other States of the United States and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade in commerce in said products between and among the various States of the United States, and especially as to respondent Farmers' Cooperative Fertilizer Co. to and through the cities of Richmond, Blackstone and Kenbridge, State of Virginia, and therefrom to and through other States of the United States, the Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That the respondent, Armour & Co., in the conduct of its business purchased, acquired or obtained control of respondent the Farmers' Cooperative Fertilizer Co., and has since and within the three years last past continued to operate the business of said corporation under the trade name of the Farmers' Cooperative Fertilizer Co.

PAR. 4. That respondent, Armour & Co., now and for more than two years last past, with the purpose, intent, and effect of stifling and suppressing competition in the manufacture and sale of fertilizing materials in interstate commerce, has concealed and still conceals from the purchasing and consuming public its control of interest in and affiliation with respondent, the Farmers' Cooperative Fertilizer Co.; and respondent, Armour & Co., for more than two years last past has permitted, and still permits, respondent, the Farmers' Cooperative Fertilizer Co., to be held out and advertised as wholly independent and without connection with the respondent, and its products to be sold and offered for sale to the public without general disclosure of its real ownership, and respondent has directed the efforts and business of respondent the Farmers' Cooperative Fertilizer Co. and the acquisition of certain trade by respondent the Farmers' Cooperative Fertilizer Co., which respondent, Armour & Co., could not and can not acquire if the control of the Farmers' Cooperative Fertilizing Co. by Armour & Co. were generally known to the public.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served upon the above named respondents, its complaint herein, wherein it is alleged upon information and belief that said respondents have been and now are, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and fully stating its charges in that respect, and the said respondents having entered their appearances and filed their answers to said complaint, admitting certain allegations therein contained and denying certain others thereof, and having thereafter entered into a stipulation of facts wherein it was agreed that such stipulation of facts might be taken as and in lieu of testimony herein, and that the Commission might proceed without delay on said stipulation to make its findings and order and the Commission having duly considered the same and being fully advised in the premises, is of the opinion that the method of competition in question, set out in the complaint, is prohibited by said act, and makes this its report in writing, stating its findings as to the facts, as follows:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Armour & Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at the city of Chicago, in said State, and is now and at all times hereinafter mentioned, has been engaged, through its subsidiary and owned and controlled concerns, and particularly Armour Fertilizer Works, in the manufacture, purchase, and sale of fertilizing materials and fertilizers generally in commerce throughout the States of the United States, the Territories thereof, and the District of Columbia, and foreign countries, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged; that the respondent, Farmers' Coopera-

tive Fertilizer Co. (Inc.), is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, with its principal office and place of business located at the city of Richmond, in the State of Virginia, the capital stock of which is owned and controlled by the respondent, Armour & Co., through its subsidiary, the Armour Fertilizer Works, and is now and at all times hereinafter mentioned has been engaged in the manufacture and sale of fertilizing materials generally in commerce throughout the States of the United States, the Territories thereof and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Armour & Co., through its subsidiary, Armour Fertilizer Works, in November, 1912, caused to be organized the respondent, Farmers' Cooperative Fertilizer Co. (Inc.), to take over the business of manufacturing and selling fertilizers and fertilizer products in commerce, of the Farmers' Cooperative Guano Co. That respondents have continuously manufactured, advertised, and sold the products of said Farmers' Cooperative Fertilizer Co. (Inc.), in commerce, to the trade and consumers generally from 1912 to 1919 as fertilizers and fertilizer products made and sold by a farmers' cooperative company.

PAR. 3. That since November, 1912, the business of the respondent, the Farmers' Cooperative Fertilizer Co. (Inc.), has been conducted for the benefit of said respondent, Armour & Co., through its subsidiary, the Armour Fertilizer Works, the profits arising from the operation of said business being divided between the said Armour Fertilizer Works and the Farmers' Cooperative Fertilizer Co. (Inc.), in equal shares, up to the summer of 1916, and since said date, upon the basis of 40 per cent of said profits to said Armour Fertilizer Works and 60 per cent to said Farmers' Cooperative Fertilizer Co. (Inc.). That at all times since November, 1912, said respondent, Armour & Co., through its said subsidiary, has controlled the purchase of raw materials used by said Farmers' Cooperative Fertilizer Co. (Inc.) in the course of its business and has controlled the

prices at which said Farmers' Cooperative Fertilizer Co. (Inc.) sold its manufactured products.

PAR. 4. That prior to the service of the complaint herein, neither of the respondents herein or any of their officers or agents, did any acts or took any steps to disclose to the trade or purchasing public the fact of the ownership and control, by the respondent, Armour & Co., through its subsidiary, the Armour Fertilizer Works, of the stock of said Farmers' Cooperative Fertilizer Co. (Inc.), but since the issuance of said complaint on, to wit, January 24, 1919, the words, "Armour owned" have been placed upon all bags, tags, stationery, and advertising material used by the respondent, the Farmers' Cooperative Fertilizer Co. (Inc.), in the conduct of its business.

#### CONCLUSION.

That the practice of respondents set forth in the foregoing findings as to the facts, are unfair methods of competition in interstate commerce and as such are within the meaning, and in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served upon the above-named respondents its complaint herein, wherein it alleged upon information and belief that said respondents have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and fully stating its charges in that respect, and the said respondents having entered their appearances and filed their answers to said complaint, admitting certain allegations therein contained and denying certain others thereof, and having thereafter entered into an agreed statement of facts wherein it was stipulated and agreed that such agreed statement of facts might be taken as and in lieu of testimony, and

that the Commission might proceed forthwith to make its report and findings as to the facts and issue its order without the introduction of further testimony, and said respondents having waived any and all right to make argument or file briefs and the Commission being fully advised in the premises, having made its report containing its findings as to the facts and its conclusion that respondents had violated the provisions of said section 5, which said report is hereby referred to and made a part hereof; now, therefore,

*It is ordered* that the respondents, Armour & Co. and Farmers' Cooperative Fertilizer Co. (Inc.), cease and desist from directly or indirectly, through their officers, agents, servants, or owned, controlled, or subsidiary companies, or through any medium whatsoever, selling or offering for sale in commerce fertilizers or fertilizer products manufactured by said Farmers' Cooperative Fertilizer Co. (Inc.) without fully disclosing to the trade and purchasing and consuming public that said respondent Armour & Co., through stock ownership, controls the distribution and sale of the fertilizers and fertilizer products sold or offered for sale in commerce by said respondent Farmers' Cooperative Fertilizer Co. (Inc.).

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## FEDERAL TRADE COMMISSION *v.* RINGWALT LINOLEUM WORKS (INC.).

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 96.—May 27, 1919.

### SYLLABUS.

Where a corporation engaged in the manufacture and sale of a floor covering composed of a felt paper base impregnated with asphaltum, painted on both sides and printed on the top surface with decorative designs, included in its corporate name the word "linoleum," called its product "linoleum," held out and advertised the same as linoleum, and sold the same in competition with genuine linoleum, such simulation of design and use of the word "linoleum" being intended to mislead and deceive, and resulting in misleading and deceiving purchasers:

*Held*, That the simulation of name and design, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Ringwalt Linoleum Works, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Ringwalt Linoleum Works (Inc.), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, having its principal factory, office, and place of business located at the city of New Brunswick in said State, now and for more than two years last past engaged in the manufacture and sale of a floor covering composed of a felt base impregnated with asphaltum with a paint backing and facing, among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Ringwalt Linoleum Works (Inc.), in the conduct of its business, manufactures such floor coverings so sold by it, in its factory located at the city of New Brunswick, State of New Jersey, and purchases and enters into contracts of purchase for the necessary component materials needed therefor, in different States and Territories of the United States, causing the same to be transported to its factory where they are made into the finished product, sold and shipped to the purchasers thereof; that after such products are so manufactured, they are continuously moved to, from, and among other States and Territories of the United States, the District of Columbia, and foreign countries, and there is continuously and has been at all times hereinafter mentioned, a constant current of trade and commerce in the said products between and



among the various States and Territories of the United States and the District of Columbia, and especially to and through the city of New Brunswick, State of New Jersey, and therefrom to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That the respondent, Ringwalt Linoleum Works (Inc.), within the last year, with the purpose, intent, and effect of stifling and suppressing competition in interstate commerce in the sale of floor coverings, has advertised, held out, and sold its product to the public as linoleum, which simulation is designed and calculated to, and does, deceive and mislead the public and cause purchasers to believe that respondent's product is linoleum.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it has reason to believe that the above-named respondent, Ringwalt Linoleum Works (Inc.), had been and then was using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered its appearance by its attorneys at law, Kenyon & Kenyon, and formal hearing having been held before an examiner of this Commission, testimony being introduced on behalf of the Commission, and the respondent declining to introduce any testimony in its defense, and the Commission being duly advised in the premises, now upon the pleadings and said testimony, the Commission makes its report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Ringwalt Linoleum Works (Inc.), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of

New Jersey, having its principal factory, office, and place of business located at the city of New Brunswick in said State, now and for more than two years last past engaged in the manufacture and sale of a floor covering composed of a felt paper base impregnated with asphaltum with a paint backing and facing, among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Ringwalt Linoleum Works (Inc.), in the conduct of its business, manufactures such floor coverings so sold by it, in its factory located at the city of New Brunswick, State of New Jersey, and purchases and enters into contracts of purchase for the necessary component materials needed therefor, in different States and Territories of the United States, causing the same to be transported to its factory where they are made into the finished product, sold, and shipped to the purchasers thereof; that after such products are so manufactured, they are continuously moved to, from, and among other States and Territories of the United States, the District of Columbia, and foreign countries, and there is continuously and has been at all times hereinafter mentioned, a constant current of trade and commerce in the said products between and among the various States and Territories of the United States and the District of Columbia, and especially to and through the city of New Brunswick, State of New Jersey, and therefrom to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That the word "linoleum," both in technical and popular usage has a precise and exact meaning and is only properly used to describe a floor covering made essentially in accordance with the expired patents granted to one Frederick Walton in England on December 19, 1863, No. 3210, and in the United States on February 23, 1869, No. 87227, and composed of oxidized oil and gums intimately mixed with ground cork or wood flour, usually on a back of burlap or canvas, the surface thereof being frequently finished in decorative designs which are either printed thereon or result from different portions of the material being

dyed in various colors and placed in suitable arrangement upon the fabric back.

PAR. 5. That the respondent, under its corporate name, Ringwalt Linoleum Works (Inc.), is engaged in the manufacture and sale of a floor covering under the name "Ringwalt's Linoleum" which is not made at all in accordance with the expired patents of Frederick Walton, and is not composed of oxidized oil and gums intimately mixed with ground cork or wood flour on a back of burlap or canvas, but consists of a base of felt paper saturated with asphaltum and painted on both sides with one or more coats of paint and printed on the top surface with decorative designs similar to those with which linoleum is printed, and that the respondent manufactures no linoleum as hereinbefore described in paragraph 3 of these findings.

PAR. 5. That there are numerous other felt-paper base floor coverings made by different manufacturers essentially similar to the product of the respondent, described in paragraph 4 of these findings, and extensively sold and advertised in interstate commerce throughout the various States and Territories of the United States, under various trade names, and that none of said felt-paper base floor coverings is advertised or held out by its manufacturer as linoleum.

PAR. 6. That in appearance the said product of the respondent closely resembles the printed linoleum hereinbefore described in paragraph 3 of these findings, and the respondent for more than two years last past, with the effect of stifling and suppressing competition in interstate commerce in the sale of floor coverings, has held out, advertised and sold its product as linoleum, which simulation is designed and calculated to, and does, deceive and mislead the public and cause purchasers to believe that the said product of respondent is linoleum.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts is, under the circumstances set forth in the above findings as to the facts, an unfair method of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September

26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, Ringwalt Linoleum Works (Inc.), had been and then was using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered its appearance by its attorneys at law, Kenyon & Kenyon, and formal hearing having been held before an examiner of this Commission, testimony being introduced on behalf of the Commission, and the respondent declining to introduce any testimony in its defense; and the Commission having made its report and findings as to the facts and conclusions upon the pleadings and said testimony and having concluded upon such findings as to the facts that the respondent has been guilty of an unfair method of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered,* That the respondent, Ringwalt Linoleum Works (Inc.), cease and desist from advertising, holding out, and selling as linoleum the floor covering manufactured by it and heretofore advertised and sold by it under the trade name of "Ringwalt's Linoleum," and from using the word "linoleum" in any way to designate or describe any similar floor covering manufactured by it which is not made essentially in accordance with the expired patents of one Frederick Walton, and which is not composed of oxidized oil and gums intimately mixed with ground cork or wood flour; and it is

*Further ordered*, that until such time as the respondent may be engaged in the manufacture of floor covering made essentially in accordance with the expired patents of Frederick Walton and composed of oxidized oil and gums intimately mixed with ground cork or wood flour, the respondent shall cease and desist from using the word "linoleum" as part of its corporate title in connection with the sale and advertisement of floor coverings manufactured by it.

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FEDERAL TRADE COMMISSION *v.* THE ELI LILLY  
& CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF THE ALLEGED VIOLATION OF SECTIONS 2 AND 3 OF THE ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket No. 155.—May 27, 1919.

SYLLABUS.

Where a corporation engaged in the manufacture and sale of drugs, pharmaceuticals, and similar products, the quantity of whose products manufactured and sold constituted a substantial and important item of commerce—

- (a) Sold the same to selected wholesale distributors under contracts, agreements, or understandings whereby such distributors agreed to adhere to and maintain resale prices fixed and determined by the manufacturer;
- (b) Refused to sell to distributors who resold its products at less than the prices fixed;
- (c) Discriminated in price against those distributors who failed to adhere to the prices fixed; and
- .(d) Discriminated in price in favor of such distributors as did adhere to said fixed prices;

*Held*, That a scheme of resale price maintenance, substantially as described, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

I. The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that The Eli Lilly & Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate

commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondent, The Eli Lilly & Co., is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, having its principal factory, office, and place of business located at the city of Indianapolis, in said State, and with branch offices located at the city of New York, State of New York; St. Louis, State of Missouri; Chicago, State of Illinois; Kansas City, State of Missouri; and New Orleans, State of Louisiana, now and for more than two years last past engaged in the manufacture and sale of drugs and similar products among the several States of the United States, the Territories thereof, the District of Columbia, and in foreign countries, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, The Eli Lilly & Co., in the conduct of its business, manufactures such drugs so sold by it in its factory located at the city of Indianapolis, State of Indiana, and purchases and enters into contracts of purchase for the necessary component materials needed therefor in different States of the United States, the Territories thereof, and foreign countries, causing the same to be transported to its factory, where they are made into the finished product, sold and shipped to the purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among other States and Territories of the United States, the District of Columbia, and foreign countries, and there is continuously and has been at all times hereinafter mentioned a constant current of trade and commerce in the said products between and among the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, and especially to and through the city of Indianapolis, State of Indiana, and therefrom to

and through other States and Territories of the United States, the District of Columbia, and foreign countries.

PAR. 3. That the respondent, The Eli Lilly & Co., has adopted and maintains a system of fixing prices at which its products shall be resold by jobbers and wholesalers, with the effect of securing the trade of such jobbers and wholesalers and of enlisting their active cooperation in enlarging the sale of its price-maintained products to the prejudice of competitors who do not fix and require the maintenance of the resale prices of their products, and with the effect of eliminating competition in price among the jobbers and wholesalers in its goods and thereby depriving jobbers and wholesalers of their right to sell such goods at such prices as they may deem adequate and warranted by their selling efficiency, and with other effects; and that for the purpose of maintaining said standard resale prices and of inducing and compelling its customers to maintain and keep such standard prices, the respondent for more than one year last past has refused and is still refusing to sell its products to customers or dealers who will not agree to maintain such specified standard resale prices or who do not resell such products at the specified standard selling prices so fixed and determined by the respondent as aforesaid, and has made and is still making contracts with jobbers and wholesalers whereby respondent discriminates in price, and otherwise, in their favor in consideration of their maintaining said resale price.

PAR. 4. That respondent for more than one year last past by means of contracts and by other means has been and now is discriminating in price and in allowances of cost of transportation and otherwise in favor of certain jobbers and wholesalers (1) on the condition that such jobbers and wholesalers will furnish and supply respondent's products on all orders not specifying any particular make, and (2) on the condition that such jobbers and wholesalers will instruct their sales force, both house and traveling, from time to time, to push respondent's goods in preference to all other makes, and (3) on other conditions of similar nature; and that respondent's said methods of marketing its goods are designed and calculated to, and do, cause such jobbers and

wholesalers to confine their purchases, either largely or exclusively, to the products of the respondent, and hinder and prevent respondent's competitors from making sales of similar products to such jobbers and wholesalers.

II. The Federal Trade Commission having reason to believe from a preliminary investigation made by it, that The Eli Lilly & Co., hereinafter referred to as the respondent, has violated and is violating the provisions of sections 2 and 3 of the act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," hereinafter referred to as the Clayton Act, issues this complaint, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondent, The Eli Lilly & Co., is now and was at all times hereinafter mentioned a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, having its principal factory, office, and place of business located at the city of Indianapolis, in said State, and with branch offices located at the city of New York, State of New York; St. Louis, State of Missouri; Chicago, State of Illinois; Kansas City, State of Missouri; and New Orleans, State of Louisiana; now and for more than two years last past, engaged in the manufacture and sale of drugs and similar products among the several States of the United States, the Territories thereof, the District of Columbia, and in foreign countries, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged, as more fully alleged and set forth in paragraph 2 of Section I of this complaint.

PAR. 2. That the respondent, The Eli Lilly & Co., for more than one year last past, in the course of interstate commerce, in violation of section 2 of the Clayton Act, has discriminated in price and is now discriminating in price between different purchasers of drugs, which said drugs are sold for use, consumption, or resale within the United States and the Territories thereof, and the District of Columbia, and that the effect of such discrimination may be, and is to substantially lessen competition or tend to create a monopoly in the business of manufacturing and selling drugs.



PAR. 3. That the respondent, The Eli Lilly & Co., for more than one year last past, in the course of interstate commerce, in violation of section 3 of the Clayton Act, has sold and made contracts for sale of large quantities of drugs for use and consumption throughout the United States, the Territories thereof, and the District of Columbia, and has fixed and is now fixing the price charged therefor or discount from, or rebate upon such price on the condition, agreement, or understanding that the purchaser thereof shall not use the goods, wares, merchandise, supplies, or other commodities of a competitor or competitors of respondent and that the effect of such sales, and contracts of sale, or such conditions and agreements, or understandings may be, and is to substantially lessen competition and to tend to create a monopoly.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein wherein it is alleged that it had reason to believe that the above-named respondent, The Eli Lilly & Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect of such alleged violation would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by George L. Denny and Henry H. Hornbrook, its attorneys, and having duly filed its answer admitting certain of the allegations of said complaint and denying certain others thereof, and attorneys for both parties having signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said statement of facts should be taken by the Commission in lieu of testimony herein and that the Commission should forthwith proceed upon such agreed statement of facts to make and enter its report stating its findings as to the facts, and its conclusions and its order disposing of this

proceeding; the Commission having duly considered the record and being fully advised in the premises, now makes its report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, The Eli Lilly & Co., is a corporation organized and doing business under the laws of the State of Indiana, and having its principal factory, office, and place of business located in the city of Indianapolis, in said State, and with branch offices located in the city of New York, State of New York; city of St. Louis, State of Missouri; city of New Orleans, State of Louisiana, and elsewhere, and is now and has been for more than two years last past engaged in the manufacture and sale of drugs, pharmaceuticals, and similar products among the several States of the United States, the Territories thereof, and the District of Columbia, and in foreign countries in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its said business respondent manufactures such drugs, pharmaceuticals and similar products as sold by it in its factory located in the city of Indianapolis, State of Indiana, and purchases and enters into contracts of purchase for the necessary component materials needed therefor in the different States of the United States, the Territories thereof, and the District of Columbia, and in foreign countries, transporting the same to said city of Indianapolis, State of Indiana, where they are made into the finished products which are thereafter sold and shipped to the purchasers thereof throughout the country; that after such products are so manufactured they are continuously moved to, from, and among other States and Territories of the United States, and there is continually, and has been at all times hereinafter mentioned, a constant current of trade and commerce in said products among the various States of the United States, the Territories thereof, and the District of Columbia, and in foreign countries.

PAR. 3. That the quantity of such products so manufactured and sold and distributed by respondent has been and

is substantial, and forms an important item of commerce among the several States and Territories of the United States, the District of Columbia, and in foreign countries, and that the total gross sales therein amount to several million dollars annually.

PAR. 4. That for many years respondent has and still does, market its drugs solely through wholesale druggists throughout the country. These druggists are known as respondent's selected wholesale distributors, and such distributors are generally known to the wholesale drug trade throughout the United States.

PAR. 5. That for more than two years last past the said respondent, The Eli Lilly & Co., has adopted and maintained in the sale and distribution of its products, and still maintains, a system of fixing and determining the prices at which the products manufactured by it shall be resold by said selected wholesale distributors throughout the country, and has made a practice of entering into contracts with all such selected wholesale distributors wherein and whereby each of said distributors has agreed to adhere to and maintain such resale prices so fixed and determined by respondent, upon the resale of its products to the retail trade or to the consuming public.

PAR. 6. That respondent periodically issues a list of its wholesale distributors which is circulated among all of the wholesale druggists of the country handling its said products, and on which is conspicuously printed the following notice:

*EXPLANATORY.—Wholesale prices on Lilly products are made only to the dealers mentioned in this list.*

Lilly goods are sold to retailers at fixed and uniform prices and through our selected list of wholesale distributors only. These prices are never departed from by us and are to be strictly adhered to by our distributors.

We reserve the right to refuse all orders from parties who do not adhere to our prices and terms.

We also reserve the right to decide for ourselves the desirability of entering or removing names from this list.

Changes in prices due to market fluctuations are promptly sent to dealers on this list.

PAR. 7. That the respondent makes it generally known to all of such selected wholesale druggists handling its prod-

ucts that if they or any of them fail to adhere to said prices so specified by respondent in the resale of said products as aforesaid, respondent reserves the right to refuse to fill further orders for its said products from such wholesale druggists.

PAR. 8. That as a result of the adoption and maintenance of this policy the great majority of respondent's wholesale distributors have in the past usually adhered and still do adhere in substantially all cases to the said resale prices so specified by respondent, and that while respondent has reserved the right to refuse to sell to any of said distributors for failure to adhere to said prices, yet, as a matter of fact, respondent has only been called upon to exercise this right in a few cases during the past five years.

PAR. 9. That respondent's said system of price maintenance has been in force during the past 25 years and its said list of wholesale distributors has been built up during that time, and that the result has been that the relationship between the respondent and its said distributors has been and is a close one, and said distributors have all, as a general rule, favored said price-maintenance policy and cooperated with respondent in maintaining the same.

PAR. 10. That wholesale druggists generally prefer to handle and push products on which there is a constant fixed margin of profit rather than those sold by manufacturers who do not suggest resale prices or maintain the same by any means whatsoever.

PAR. 11. That in the conduct of said business respondent employs a large force of traveling salesmen, who call upon said selected wholesale distributors of respondent's products as well as upon the retail trade and physicians generally, and that through said traveling salesmen respondent received reports as to the methods by which said wholesale distributors are handling respondent's said products, including price cutting. Such reports, however, are not of a formal character and not systematically required by respondent, but through these salesmen respondent, in a general way, keeps informed as to conditions among its wholesale distributors and the wholesale drug trade generally.

PAR. 12. That the costs of doing business of wholesale druggists, including the said respondent's selected wholesale distributors show divergencies owing to differences in selling methods, and that the gross profit margins allowed in said specified resale prices are the same for all such distributors.

PAR. 13. That the form of contract attached to said agreed statement of facts marked "Exhibit A" is the one usually signed by said wholesale distributors of respondent's products, and that Exhibit B annexed to said agreed statement of facts, is a copy of respondent's list of wholesale distributors, revised to February 1, 1917, and contains the names of 248 wholesale druggists throughout the United States handling the respondent's said products under the terms and conditions above set forth.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings are, and each of them, is under the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein wherein it is alleged that it had reason to believe that the above-named respondent, The Eli Lilly & Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect of such alleged violation would be to the interest of the public, and fully stating its charges, and the respondent having duly entered its appearance by George L. Denny and Henry H. Hornbrook, its attorneys, and having duly filed its answer admitting certain of the allegations of said complaint and denying certain others thereof, and said attorneys having signed and filed

an agreed statement of facts wherein and whereby it was duly stipulated and agreed that said statement of facts should be taken by the Commission in lieu of testimony herein, and that the Commission might forthwith proceed upon such agreed statement of facts to enter its report and its findings as to the facts, its conclusions, and its order disposing of this proceeding, and the Commission of the date hereof having made and filed its report containing its findings as to the facts and its conclusions that respondent has violated section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and which said report is hereby referred to and made part hereof: Now, therefore,

*It is ordered:* That respondent, The Eli Lilly & Co., and its officers, directors, agents, servants, and employees, cease and desist from directly and indirectly recommending, requiring, or by any means whatsoever bringing about the resale by its wholesale distributors of the drugs and pharmaceuticals and similar products manufactured by it according to any system of prices fixed or established by respondent, and more particularly by any or all of the following means:

(1) Entering into contracts, agreements, or understandings with such distributors to the effect that such distributors in reselling such products will adhere to any system of resale prices fixed or established by respondent;

(2) Securing from such distributors contracts, agreements, or understandings that they will adhere to any such system of resale prices;

(3) Refusing to sell to any such distributors because of their failure to adhere to any such system of resale prices;

(4) Discriminating in prices against such distributors because of their failure to adhere to any such system of resale prices;

(5) Discriminating in prices in favor of such distributors because of their adherence to any such system of resale prices;

(6) Carrying out or causing others to carry out a price maintenance policy by any other means:

*Provided*, That nothing herein contained shall prohibit respondent from issuing price lists or printed prices in its advertising matter, or upon containers, of its said products, so long as respondent shall refrain from directly or indirectly recommending, requiring, or by any means whatsoever, bringing about the resale of such products at such resale prices.

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FEDERAL TRADE COMMISSION *v.* C. W. BAKER  
& SONS.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 194.—May 27, 1919.

SYLLABUS.

Where a firm engaged in the sale, as exclusive agents, of canned goods under its own brand—

(a) Entered into contracts with jobbers and wholesalers by the terms of which it required of them:

(1) Not to resell its products at prices less than those fixed by it;  
(2) Not to sell, loan, or exchange such goods to or with any dealer who had not signed a similar contract or who, having signed one, had violated it;

(3) To give said firm, in case a violation of any such contracts was alleged, the name of the violator and other particulars respecting such violation; and,

(4) To forfeit and pay a penalty of \$100 for failure or refusal to make, upon request, an affidavit denying the violation of any such contracts;

(b) Agreed to pay the sum of \$100 for information of the violation of any such contracts;

(c) Agreed to pay a rebate at a future date, in addition to the usual discount for cash, conditioned upon the terms of such contracts having been adhered to; and,

(d) Carried out the terms of said contracts and enforced the observance thereof by jobbers and wholesalers:

*Held*, That a scheme of resale price maintenance, substantially as described, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that P. T.

Baker, F. E. Baker, and A. L. Baker, copartners, doing business under the firm name and style of C. W. Baker & Sons, all of whom are hereinafter referred to as respondents, have been, and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereto would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondents, P. T. Baker, F. E. Baker, and A. L. Baker are copartners doing business under the firm name and style of C. W. Baker & Sons, having their principal office and place of business located in the town of Aberdeen, State of Maryland, and are now and were at all times hereinafter mentioned engaged in the business of selling canned goods and products throughout the States of the United States, the Territories thereof, the District of Columbia, and foreign countries in direct competition with other persons, firms, copartners, and corporations similarly engaged.

PAR. 2. That in the conduct of their business respondents purchase the aforesaid canned goods and products in the various States of the United States and Territories and transport the same through other States and Territories in and to the town of Aberdeen, State of Maryland, which are sold and shipped to purchasers thereof in different States and Territories of the United States and the District of Columbia, and there is continuously and has been at all times herein mentioned a constant current of trade and commerce in said canned goods and products among and between the various States and Territories of the United States, the District of Columbia and foreign countries, and especially to and through the town of Aberdeen, State of Maryland, and therefrom to and through other States and Territories of the United States, the District of Columbia and foreign countries.

PAR. 3. That with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of



their canned goods and products in interstate commerce, the respondents have adopted and maintain a system of fixing prices at which their products shall be resold by dealers, with the effect of securing the trade of dealers and of enlisting their active cooperation in enlarging the sale of their price-maintained product, to the prejudice of competitors who do not fix and require the maintenance of resale prices of canned goods and products, and with the effect of eliminating competition in prices among the dealers in their canned goods and products and thereby depriving dealers of their right to sell such canned goods and products, at such prices as they may deem adequate and warranted by their selling efficiency, and with other effects; and that for the purpose of maintaining said standard resale prices and of inducing and compelling their customers to maintain and keep such standard prices, respondents have for more than two years last past—

(a) Refused and are still refusing to sell their canned goods and products to customers or dealers who will not agree to maintain such specified standard resale prices, or who do not resell such canned goods and products at the specified standard selling prices so fixed and determined by the respondent as aforesaid.

(b) Made and entered into contracts with their customers by the terms of which a penalty of \$100 is imposed upon such customers who do not maintain such specified standard resale prices as set forth in said contract, or who do not resell such canned goods and products at the specified standard selling prices so fixed and determined by the respondents as aforesaid.

(c) Made and entered into contracts and agreements with certain of their customers by the terms of which they pay such customers semiannually rebates varying from 10 to 12½ cents per dozen of the total amount of canned goods and products purchased by them within such period, in consideration that such customers or dealers will maintain and keep such specified standard resale prices as set forth in said contracts, or who do not resell such canned goods and products below the specified standard selling price so fixed and determined by the respondents as aforesaid.

**REPORT, FINDINGS AS TO THE FACTS, AND  
ORDER.**

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondents, C. W. Baker & Sons, have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and fully stating its charges in that respect and the respondents having entered their appearance by Stevenson A. Williams and Philip H. Close, their attorneys, and having filed their answer herein, and said attorneys having signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said statement of facts, together with the exhibits thereto annexed, should be taken by the Commission as testimony and evidence herein, and that the Commission might forthwith proceed thereupon to adjudicate the above entitled matter in accordance with the law, the Commission now makes its report and findings as to the facts and conclusions, as follows:

**FINDINGS AS TO THE FACTS.**

**PARAGRAPH 1.** That respondents, P. Tevis Baker, Frank E. Baker, and A. Lynn Baker, at present constitute the firm of C. W. Baker & Sons, having their principal office and place of business located in the town of Aberdeen, State of Maryland; that for some years prior to the 1st day of January, 1918, said firm was composed of Charles W. Baker together with the said P. Tevis Baker and Frank E. Baker, and on said 1st day of January, 1918, the said A. Lynn Baker was admitted as a partner in said firm, and thereafter in the month of June, 1918, the said Charles W. Baker departed this life; that for more than two years last past the said firm has been and now is engaged in the business of selling canned goods as factors and commission merchants throughout the States and Territories of the United States and the District of Columbia, in direct com-

petition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of their said business respondents as such copartners as aforesaid have for more than two years last past been and still are acting as the exclusive selling agents of certain canned goods known as "Bakers' Canned Corn," which products are put up and canned by the owners of certain canning factories located in the States of Maryland and Delaware.

PAR. 3. That the quantity of such products so sold and distributed by respondents, as such exclusive agents of the manufacturers thereof, was and is substantial and the same forms an important item of commerce among the several States and Territories of the United States and the District of Columbia, and respondents sell and distribute the same through wholesalers and jobbers residing and doing business in the several States and Territories of the United States and District of Columbia.

PAR. 4. That prior to the 1st day of January, 1918, respondents in making sales of said "Bakers' Canned Corn" to wholesalers and jobbers required said purchasers, in many instances, to enter into agreements or contracts in the form designated "Contract governing sale of Bakers' canned corn," annexed to respondents' answer herein, and a copy of which is annexed to and made a part of said agreed statement of facts and marked "Exhibit A."

PAR. 5. That each of the purchasers signing such agreements was required to and did agree not to sell or cause to be sold said "Bakers' Canned Corn" for less than the prices specified in said agreements, and said agreements were by the terms thereof made equally binding on all sales of said corn made by said purchasers respectively, whether said goods were on hand at the time of making said agreements or came into purchasers' possession thereafter.

PAR. 6. That in and by said agreements it was further provided that C. W. Baker & Sons, the respondents, should have authority to order an increase or reduction in the selling price named therein, and that upon receipt of such increase or reduction the purchasers signing said agree-

ments agreed thereafter to sell said corn at the price named in said notices.

PAR. 7. That in and by said agreements said purchasers of said "Bakers' Canned Corn" were further required to agree that they would refuse to sell at any price or loan or exchange for other goods, any of said "Bakers' Canned Corn" to any dealer who had not signed a similar agreement, or who had violated such agreement, or who was selling said goods for less than the price named therein; and each of said purchasers further agreed that in case a charge of violating said agreement should be made, he or they would, if requested by respondents, give the name of the person making such sale, and such other particulars as respondents might desire, and that refusal to do this should be conclusive evidence against said purchaser that such charge was true.

PAR. 8. That each of said purchasers signing said agreement agreed to pay respondents the sum of \$100 in case any employee of said purchaser refused, when requested by respondents, to make an affidavit denying an accusation of violating said agreement, and such refusal was agreed to be conclusive evidence against said employee that said charge was true; and said respondents, C. W. Baker & Sons, agreed to pay the sum of \$100 to the parties making or furnishing proof of any such charges.

PAR. 9. That respondents used a sales contract in connection with said agreement with purchasers of said "Bakers' Canned Corn," hereinbefore referred to, which sales contract was in form similar to Exhibit B, attached to said agreed statement of facts herein.

PAR. 10. That said sales contracts contained the following clause:

Terms: Cash in 10 days less 2 per cent, with an additional rebate of ----- cents per doz. -----, 191--, on condition only that your contract bearing even date herewith, has been kept.

PAR. 11. That at times respondents made sales of said "Bakers' Canned Corn" to purchasers who objected to entering into said agreements, without requiring the execution thereof on the part of said purchasers.

**PAR. 12.** That at the close of the year 1917 the owners of said brand determined to discontinue the use of said contract, and have discontinued the use thereof, and do not intend to make use of it at any time in the future, and said owners have offered and are ready and willing to come into this proceeding and to stipulate herein that at no time hereafter shall said agreements or any agreement of like import and effect be made use of in the sale of the said "Bakers' Canned Corn."

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts are, under the circumstances herein set forth, unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondents having entered their appearance by Stevenson A. Williams and Philip H. Close, their attorneys, and having filed their answer and agreed statement of facts, wherein it was stipulated that the Commission shall forthwith proceed thereupon to adjudicate the above entitled matter in accordance with law, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondents have violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is referred to and made a part hereof: Now, therefore,

*It is ordered,* That the respondents, C. W. Baker & Sons, of Abedreen, Md., and the members, agents, servants, and employees of said firm, cease and desist from—

(1) Requiring purchasers of "Bakers' Canned Corn" to enter into any agreements or contracts in the form designated as "Contract governing sale of Bakers' canned corn," at-

tached to respondents' answer herein, or any agreements or contracts of like import or effect;

(2) Entering into or requiring purchasers of "Bakers' Canned Corn" to enter into any agreements or contracts in any form whatever to the effect that said purchasers will, in reselling said "Bakers' Canned Corn" adhere to or observe prices fixed or determined by respondents, or by the owners of said brand:

(3) Requiring purchasers of "Bakers' Canned Corn" to enter into any agreements or contracts wherein or whereby said purchasers shall be required to promise or agree not to sell or cause to be sold said "Bakers' Canned Corn" for less than the prices specified in said agreements;

(4) Imposing any penalties whatever on such purchasers for failure to adhere to or observe such prices;

(5) Granting rebates to such purchasers for adhering to or preserving such prices.

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**FEDERAL TRADE COMMISSION v. ALLEN SALES SERVICE (INC.), C. LOUIS ALLEN AND WILLIAM H. YETMAN.**

**COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS, APPROVED SEPTEMBER 26, 1914.**

**Docket No. 223.—May 27, 1919.**

**SYLLABUS.**

Where an employee of a corporation, engaged in the sale and distribution of fire extinguishers and similar products, who had been an employee of a concern handling competitive goods—

- (a) Secretly abstracted confidential trade information from the records of the latter concern while in its employ;
- (b) Obtained the sole selling agency of the goods theretofore handled by the competing concern through false and misleading representations;
- (c) Offered to give and gave to employees of the United States interested in the purchase of goods for the Government, gratuities, such as liquors, cigars, meals, theater tickets, and other presents, as an inducement to influence them to purchase goods of the donor corporation:

**Held,** That such acts on the part of said employee constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

## COMPLAINT.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that the Allen Sales Service (Inc.), C. Louis Allen, and William H. Yetman, hereinafter referred to as respondents, have been, and are, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Allen Sales Service (Inc.), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, having its office and principal place of business in the city and State of New York, now, and ever since the date of its incorporation, to wit: The first day of April, 1918, engaged in the business of selling and distributing fire extinguishers, fire appliances, and similar products generally in commerce throughout the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 2. That the respondents, C. Louis Allen and William H. Yetman, were the organizers, and are now, and have been since the date of its incorporation, the president and government representative, respectively, of the respondent, Allen Sales Service (Inc.), and had been for a long period of time immediately prior to its incorporation the president and manager of the fire appliance department, respectively, of the Pyrene Co., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business in the city and State of New York, now, and for more than two years last past, engaged in the sale and distribution of fire extinguishers, general fire appliances, and similar products generally in commerce throughout the several States of the

United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 3. That the respondents, C. Louis Allen and William H. Yetman, by reason of the positions and offices of trust held by them in the said Pyrene Co., had access to and were in possession of said company's lists of customers and agents, and prospective customers and agents, lists of manufacturers from which the Pyrene Co. obtained its products and supplies, confidential price lists at which such products and supplies were purchased and sold, and other confidential information upon which to a large extent depended the successful continuance and growth of the business of the said Pyrene Co.

PAR. 4. That during the month of March, 1918, while still in the employ of the said Pyrene Co., the respondents, C. Louis Allen and William H. Yetman, disregarding the trusts imposed upon them by reason of their positions and offices, and with the intent, purpose, and effect of stifling and suppressing competition in the sale of fire extinguishers, general fire appliances, and similar products in commerce aforesaid, and for the purpose of obtaining for themselves and the respondents, Allen Sales Service (Inc.), which they at that time were organizing, an undue and unfair advantage in the sale of such products, took, carried out, and appropriated to their own use and benefit, without the knowledge or consent of said Pyrene Co., the matter contained in the aforesaid lists of customers, agents, prospects, manufacturers, and prices, and other confidential information and trade secrets, and thereafter respondents used, and have attempted to use, said lists, confidential information, and trade secrets, for the purpose of securing exclusive contracts for the purchase of the products of the various manufacturers from whom the said Pyrene Co. had been accustomed to purchase its stock in trade, and for the purpose of securing the customers and prospective customers, and the agents and prospective agents theretofore belonging to the said Pyrene Co.

PAR. 5. That, with the intent, purpose, and effect of stifling and suppressing competition in the sale and distribution of fire extinguishers, fire appliances, and similar prod-



ucts in commerce aforesaid, respondent, Allen Sales Service (Inc.), within the year last past, by means of false and misleading statements regarding the business plans of the said Pyrene Co., made by and through the respondents, C. Louis Allen and William H. Yetman, while said C. Louis Allen and William H. Yetman were in the employ of, and drawing salaries from, said Pyrene Co., and otherwise, endeavored to, and did, induce and persuade certain manufacturers, with whom the Pyrene Co. had contracts for obtaining its fire extinguishers and general fire appliances, to break and rescind said contracts and sell their entire products exclusively to the respondent, Allen Sales Service (Inc.), thereby cutting off the source from which said Pyrene Co. might, and did, obtain its supplies.

PAR. 6. That, with the intent, purpose, and effect of stifling and suppressing competition in commerce aforesaid in the sale of fire extinguishers, general fire appliances, and similar products, the respondent, Allen Sales Service (Inc.), within the year last past placed its employees in the office of a manufacturer, with whom the aforesaid Pyrene Co. had contracts for obtaining its fire extinguishers and other products, and from whom the respondent, Allen Sales Service (Inc.), was endeavoring to secure a contract for said manufacturer's entire output, for the purpose of securing knowledge and information concerning all the business dealings had between the said manufacturer and the said Pyrene Co., thereby enabling and assisting the respondent, Allen Sales Service (Inc.), in its efforts to learn and obtain the names of the customers and other trade secrets and information belonging to and concerning the said Pyrene Co.

PAR. 7. That the respondents, Allen Sales Service (Inc.), C. Louis Allen and William H. Yetman, within the year last past, with the intent, purpose, and effect of stifling and suppressing competition in the sale and distribution of fire extinguishers, general fire appliances, and similar products in commerce aforesaid, have induced employees of the said Pyrene Co. to leave their employment by offering such employees employment with respondents at and for higher wages, and by divers other means and methods, all of which was calculated and designed to harass and restrain said Py-

rene Co. in the conduct of its business and demoralize and break down its organization.

PAR. 8. That, within the year last past, it was determined by certain purchasing departments of the United States Government that henceforth all supplies were to be purchased direct from the manufacturers thereof, and not through jobbers or manufacturers' agents, and the effect of this determination or ruling was to exclude persons, firms, copartnerships, and corporations, including the respondent, Allen Sales Service (Inc.), and said Pyrene Co., engaged in the sale but not the manufacture of fire extinguishers, general fire appliances, and other products, from further sales of the same to the Government, and thereafter the respondent, Allen Sales Service (Inc.), with the intent, purpose, and effect of stifling and suppressing competition in the sale and distribution of fire extinguishers, general fire appliances, and other products in commerce aforesaid, caused various manufacturers to establish branch offices in the offices of the respondent, Allen Sales Service (Inc.), whereby said respondent was enabled to contract with the United States Government in the sale of its products in the names of such manufacturers and earn and receive large commissions on such sales, without the knowledge or consent of the United States Government, and that such practices were calculated, designed to, and did, cause the United States Government to believe that it was obtaining the lowest net prices from manufacturers and not paying for the services of commission men, brokers, middlemen, or jobbers.

PAR. 9. That, with the intent, purpose, and effect of stifling and suppressing competition in interstate commerce in the sale and distribution of fire extinguishers, general fire appliances, and like products, in commerce aforesaid, the respondents, within the year last past, have been systematically and on a large scale giving and offering to give to the employees of both its customers and prospective customers and to officers of the armed forces of the United States and other persons concerned in the conduct of the war as an inducement to influence their employers and the United States Government to purchase, or contract to purchase, from the respondents fire extinguishers, general fire appliances, and

like products, without other consideration therefor, gratuities, such as liquor, cigars, meals, theater tickets, valuable presents, and other personal property.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, in which it is alleged that it had reason to believe that the above-named respondents, Allen Sales Service (Inc.), C. Louis Allen, and William H. Yetman, have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in this respect will be to the interest of the public and fully stating its charges in this respect and the respondents, Allen Sales Service (Inc.) and C. Louis Allen, having entered their appearance by Jesse C. Adkins, their attorney, duly authorized and empowered to act in the premises, and having filed their answer admitting certain of the matters and things alleged and set forth in the said complaint and denying others therein contained, and it being desirous to bring the matter to a conclusion as expeditiously as possible, an agreed statement of facts was entered into, wherein it was stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts and affidavits supplementary thereto as the evidence in this case, same to be taken in lieu of testimony and upon the same to forthwith make and enter its report, stating its findings as to the facts and its conclusions and its order, and the said agreed statement of facts and affidavits having been heretofore duly filed with this Commission, the Commission now makes this, its report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Allen Sales Service (Inc.), is now and for more than one year last past has been a corporation, organized, existing, and doing business under

and by virtue of the laws of the State of Delaware, having its principal office and place of business located at the city of New York, in the State of New York. That since its organization said respondent has been engaged in the business of selling and distributing in commerce throughout the United States a general line of labor-saving devices, fire-fighting appliances, and other products, in direct competition with other corporations, partnerships, and persons similarly engaged; that the respondent, C. Louis Allen, is now and has been continuously since its organization the duly qualified and acting president of said Allen Sales Service (Inc.); that the respondent, William H. Yetman, was prior to October 14, 1918, the duly qualified and acting vice president of said Allen Sales Service (Inc.), but on said date said Yetman resigned as vice president of said Allen Sales Service (Inc.) and on November 15, 1918, sold all his stock in said corporation and entirely severed his connections with said respondent, Allen Sales Service (Inc.).

PAR. 2. That immediately prior to the organization of the Allen Sales Service (Inc.) the respondents, C. Louis Allen and William H. Yetman, were, respectively, president and manager of the fire appliance department of the Pyrene Manufacturing Co., a corporation organized under the laws of the State of Delaware, with principal place of business in the city and State of New York; that said Pyrene Manufacturing Co. was engaged in the sale and distribution in commerce throughout the United States of a general line of fire appliances, including a 1-quart fire extinguisher on which it specialized; that the Allen Sales Service (Inc.) is not interested in either the manufacture or sale of a 1-quart extinguisher.

PAR. 3. That said respondents, C. Louis Allen, and William H. Yetman, immediately prior to April 1, 1918, in the course of their duties as officials in the corporate organizations of the Pyrene Manufacturing Co. had access to the books, records, and files of that corporation, and the respondent, William H. Yetman, took from the files of said corporation certain card records of the prices of commodities purchased by him while an officer of that corporation; that the taking of said records by said respondent, William H. Yetman, was at

the time unknown to the respondent, C. Louis Allen, and upon the matter being brought to the attention of said Allen, the said records and copies thereof were returned to the Pyrene Manufacturing Co.

PAR. 4. That prior to April 1, 1918, the Pyrene Manufacturing Co. was selling and distributing a line of fire fighting appliances, made by a manufacturer in Illinois, and in April of said year, the respondent, William H. Yetman, acting as an officer of the respondent, Allen Sales Service (Inc.), and in its behalf, entered into a contract with said manufacturer, whereby said Allen Sales Service (Inc.) became the sole selling agent for the appliances theretofore sold and distributed by said Pyrene Manufacturing Co.; that said manufacturer in entering into said contract with the respondent, Allen Sales Service (Inc.), relied upon certain misstatements, made by the respondent, William H. Yetman, to the effect, among other things, that the Pyrene Manufacturing Co. was about to discontinue handling such articles, but upon learning the facts, as stated, the respondent, C. Louis Allen, returned said contract to the said manufacturer and same was canceled by mutual consent and a new contract was made by the terms of which the respondent, Allen Sales Service (Inc.), became the selling agent for said manufacturer, for its said appliances except such as should be sold by it directly to the said Pyrene Manufacturing Co., which contract is still in force.

PAR. 5. That after April 15, 1918, and prior to October 14, 1918, the respondent, William H. Yetman, then in charge of the office and business of the respondent, Allen Sales Service (Inc.), offered and gave to officers of the armed forces of the United States and other persons concerned in the conduct of the war and who had to do with purchases of supplies for said armed forces, gratuities such as liquors, cigars, meals, theater tickets, and other presents as an inducement to influence such persons to purchase appliances from said Allen Sales Service (Inc.).

#### CONCLUSIONS.

That the methods of competition of the respondent, William H. Yetman, set forth in the foregoing findings as to the facts are, under the circumstances therein set forth, unfair

methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to creat a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondents, Allen Sales Service (Inc.), and C. Louis Allen, having entered their appearance by Jesse C. Adkins, their attorney, duly authorized and empowered to act in the premises, and having filed their answers admitting certain of the matters and things alleged and set forth in the said complaint, and denying others therein contained, and thereafter having made and executed an agreed statements of facts, wherein it was stipulated and agreed by and between the Commission and the said respondents that the Commission should forthwith proceed upon such agreed statement of facts and affidavits filed therewith, to make and enter its report and findings as to facts, and its conclusions and its order disposing of this proceeding, and the respondent, William H. Yetman, being duly served with a copy of the complaint herein, and having failed to make and enter his appearance herein, and being now in default, and the Commission having made and entered its report stating its findings of fact and its conclusions that the respondent, William H. Yetman, has violated section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered*, That the respondent, William H. Yetman, and his agents, servants, representatives, and employees, cease and desist from directly or indirectly—

1. Secretly taking or procuring the card records of the price of commodities or other confidential information from the records and files of any competitor of the respondent, Allen Sales Service (Inc.).
2. From making false and misleading statements to any customer or prospective customer of any competitor of the respondent, Allen Sales Service (Inc.), concerning the con-

duct of such competitor's business, which might have a tendency to cause such customer or prospective customer to refrain from doing business or entering into contracts of purchase with such competitor.

3. From giving and offering to give to officers of the armed forces of the United States and to other persons concerned in the conduct of the war, who have to do with purchases by the United States, gratuities such as liquors, cigars, meals, theater tickets, and other presents as an inducement to influence them to purchase or to contract to purchase from the respondent, Allen Sales Service (Inc.).

*It is further ordered*, that the complaint herein be dismissed without prejudice as to the respondents, Allen Sales Service (Inc.), and C. Louis Allen.

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## FEDERAL TRADE COMMISSION *v.* WALL ROPE WORKS (INC.).

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 232.—May 27, 1919.

### SYLLABUS.

Where a corporation engaged in the manufacture and sale of rope, oakum, and cordage gave and offered to give to employees of customers, without the knowledge and consent of their employers, sums of money, as an inducement for them to influence their employers to purchase its goods or to refrain from dealing with its competitors: *Held*, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Wall Rope Works (Inc.) hereinafter referred to as respondent, has been, for more than a year last past, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Com-

mission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the Wall Rope Works (Inc.) is a corporation, organized, and existing and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place of business at the city of New York, in the State of New York, and is now and for more than one year last past has been engaged in manufacturing and selling rope, oakum, and cordage throughout the States and Territories of the United States, and that at all times hereinafter mentioned the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That in the course of its business of manufacturing and selling rope, oakum, and cordage throughout the States and Territories of the United States, the respondent, for more than one year last past, has been secretly paying and offering to pay, to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge and consent of their employers, sums of money as an inducement to influence their said employers to purchase or contract to purchase from the respondent, rope, oakum, and cordage, or to influence such customers to refrain from dealing, or contracting to deal with competitors of the respondent.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, Wall Rope Works (Inc.), has been and is now using unfair methods of competition, in interstate commerce, in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to de-



fine its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in this respect, and the respondent having duly filed its answer, admitting certain allegations of said complaint and denying certain others thereof, and the Commission having offered testimony in support of its charges in said complaint, and the respondent having waived the right to offer testimony in its behalf, and the attorneys for the Commission and the respondent having submitted their briefs as to the law and the facts in said proceedings, the Commission now makes this report and findings as to the facts and conclusions:

#### FINDINGS AS TO THE FACTS.

First. That the respondent, Wall Rope Works (Inc.), is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, having its principal office at Beverly, said State; that it also has an office and place of business in the city of New York, State of New York, and is now, and for more than one year last past, has been engaged in manufacturing and selling rope, oakum, and cordage throughout the various States and Territories of the United States, and that all times hereinafter mentioned said respondent has carried on and conducted said business in direct competition with other persons, firms, co-partnerships, and corporations manufacturing and selling like products.

Second. That the said respondent, Wall Rope Works (Inc.), in the course of its business of manufacturing and selling rope, oakum, and cordage throughout the States and Territories of the United States for more than one year last past, has been paying to employees of customers without the knowledge and consent of their employers and without other consideration therefor, sums of money as an inducement to influence their employers to purchase or contract to purchase from said respondent, rope, oakum, and cordage, or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondent.

## CONCLUSIONS.

That the methods set forth in the foregoing findings of fact under all the circumstances therein set forth, are unfair methods of competition in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent having filed its answer, admitting certain allegations of the complaint and denying certain others thereof, and the Commission having offered testimony in support of its charges in said complaint, and the respondent having waived the right to offer testimony in its behalf, and the attorneys for the Commission and the respondent having submitted their briefs as to the law and the facts in said proceeding, and the Commission having made and filed its report containing its findings as to the facts and its conclusions that the respondent has violated section 5 of the act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered*, that the said respondent, Wall Rope Works (Inc.), and its officers, directors, agents, representatives, servants, and employees cease and desist from directly or indirectly—

Giving or offering to give to the employees of its customers or prospective customers, or those of its competitors' customers or prospective customers, without the knowledge and consent of their employers, gratuities, such as money, cash bonuses or commissions, without other consideration therefor, as an inducement to influence their employers to purchase or to contract to purchase from the said respondent, Wall Rope Works (Inc.), rope, oakum, or cordage, or to cause such customers to refrain from dealing, or contracting to deal with competitors of the said respondent.

**FEDERAL TRADE COMMISSION v. THE NEW JERSEY ASBESTOS CO.**

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 233—May 27, 1919.

**SYLLABUS.**

Where a corporation engaged in the manufacture and sale of engine packings gave and offered to give to employees of customers gratuities and entertainment as an inducement to influence their employers to purchase its goods or to refrain from dealing with its competitors:

*Held*, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

**COMPLAINT.**

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the New Jersey Asbestos Co., hereinafter referred to as respondent, has been for more than a year last past, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the New Jersey Asbestos Co., is a corporation organized and existing and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place of business at the city of New York, in the State of New York, and is now and for more than one year last past has been engaged in manufacturing and selling engine packings composed of asbestos, metal and asbestos, flax, wood fiber, and kindred products, throughout the States and Territories of the United States, and that at all times hereinafter mentioned, the respondent has carried on and conducted such business in direct competition with other persons, firms, copartner-

ships, and corporations manufacturing and selling like products.

PAR. 2. That in the course of its business of manufacturing and selling engine packings composed of asbestos, metal and asbestos, flax, wood fiber and kindred products throughout the States and Territories of the United States, the respondent, for more than one year last past has been giving and offering to give, to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to influence their employers to purchase or contract to purchase from the respondent, engine packings composed of asbestos, metal and asbestos, flax, wood fiber and kindred products, without other consideration therefor, gratuities such as liquor, cigars, meals, theater tickets, valuable presents and entertainment.

PAR. 3. That in the course of its business of manufacturing and selling engine packings composed of asbestos, metal and asbestos, flax, wood fiber, and kindred products, throughout the States and Territories of the United States, the respondent, for more than one year last past, has been paying and offering to pay, to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge and consent of their employers, sums of money as an inducement to influence their said employers to purchase or contract to purchase from the respondent, engine packings composed of asbestos, metal and asbestos, flax, wood fiber, and kindred products, or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondent.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the New Jersey Asbestos Co., hereinafter referred to as the respondent, has been for more than one year last past, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress,

approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereto would be to the interest of the public, and fully stating its charges in that respect, and the respondent having filed its answer admitting that certain matters and things alleged in said complaint are true in the manner and form therein set forth, and denying others therein contained, and the Commission having offered testimony in support of its charges in said complaint, and the respondent having waived the right to offer testimony in its behalf, and the attorneys for the Commission and the respondent having submitted their briefs as to the law and the facts, the Commission makes this report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

First. That the respondent, the New Jersey Asbestos Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place of business at the city of New York, in the State of New York, and is now, and for more than one year last past has been, engaged in manufacturing and selling engine packings composed of asbestos, metal and asbestos, flax, wood fiber, and kindred products, throughout the States and Territories of the United States, and that at all times hereinafter mentioned, the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships and corporations manufacturing and selling like products.

Second. That said respondent, the New Jersey Asbestos Co., in the course of its business of manufacturing and selling engine packings composed of asbestos, metal and asbestos, flax, wood fiber, and kindred products throughout the States and Territories of the United States, for more than one year last past has been lavishly giving gratuities, such as liquor, cigars, meals, theater tickets, and entertainment to employees of customers as an inducement to influence their employers to purchase or to contract to purchase from the said respondent.

ent, the New Jersey Asbestos Co., engine packings composed of asbestos, metal and asbestos, flax, wood fiber, and kindred products, without other consideration therefor.

#### CONCLUSION.

That the methods set forth in the foregoing findings of fact, under all the circumstances therein set forth, are unfair methods of competition in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the said respondent, the New Jersey Asbestos Co., having filed its answer admitting certain allegations of the complaint and denying certain others thereof, and the Commission having offered testimony in support of its charges in said complaint, and the respondent having waived the right to offer testimony in its behalf, and the attorneys for the Commission and the respondent having submitted their briefs as to the law and the facts in said proceeding, and the Commission having made and filed its report containing its findings as to the facts and its conclusion that the respondent has violated section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered*, that the respondent, the New Jersey Asbestos Co., its officers, directors, agents, representatives, servants, and employees, cease and desist from, directly or indirectly—

Giving or offering to give to employees of its customers or prospective customers, or employees of any of its competitors' customers or prospective customers, as an inducement to influence their employers to purchase or to contract to purchase from the respondent engine packings of asbestos, metal

and asbestos, flax, wood fiber, and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, gratuities such as liquor, cigars, meals, theater tickets, valuable presents, or entertainment, consisting of amusements or diversions of any kind whatsoever.

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## FEDERAL TRADE COMMISSION *v.* THE HOOVER SUCTION SWEEPER CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 238.—May 27, 1919.

### SYLLABUS.

Where a corporation engaged in the manufacture and sale of vacuum sweepers gave and offered to give to employees of customers and of competitors' customers cash bonuses and prizes as an inducement for them to push the sale of its goods with the purchasing public: *Held*, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Hoover Suction Sweeper Co., hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the Hoover Suction Sweeper Co., is now and was at all times hereinafter mentioned a corporation organized, existing, and doing business

under and by virtue of the laws of the State of Ohio, having its principal factory, office, and place of business located at the town of North Canton in said State, and with branch office located in the city of New York, State of New York, now and for more than two years last past engaged in the manufacture and sale of vacuum sweepers among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, the Hoover Suction Sweeper Co., in the conduct of its business manufactures such vacuum sweepers so sold by it in its factory located at the town of North Canton, State of Ohio, and purchases and enters into contracts of purchase for the necessary component materials needed therefor in different States and Territories of the United States, transporting same through other States of the United States in and to the said town of North Canton, where they are made into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured they are continuously moved to, from, and among other States and Territories of the United States, the District of Columbia, and foreign countries, and there is continuously and has been at all times hereinafter mentioned a constant current of trade in commerce in the said vacuum sweepers between and among the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries, and especially to and through the town of North Canton, State of Ohio, and therefrom to and through other States of the United States, the Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That in the course of its business of manufacturing and selling vacuum sweepers in interstate commerce the respondent, the Hoover Suction Sweeper Co., for more than one year last past has been giving and offering to give to employees of both its competitors and the employees of dealers handling and selling the products of its competitors, as an inducement to influence them to push or favor the sale of respondent's products over those of its competitors, cash bonuses and prizes.



## REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondent, the Hoover Suction Sweeper Co., has been for more than one year last past using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered its appearance by C. G. Herbruck, its attorney, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondents that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions, and its order disposing of this proceeding without the introduction of testimony or the presentation of argument: therefore, the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusions.

### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, the Hoover Suction Sweeper Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal offices and place of business located at the town of North Canton, in said State; that the said respondent is now and for more than two years last past has been engaged in the manufacture and sale of vacuum sweepers among the several States of the United States, the Territories thereof, and the District of Columbia in direct com-

petition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the Hoover Suction Sweeper Co., in the conduct of its business, manufactures such vacuum sweepers so sold by it in its factory located at the town of North Canton, State of Ohio; that after said products are so manufactured they are continuously moved to, from, and among other States and Territories of the United States, and there is continuously and has been at all times a constant current of trade and commerce in the said vacuum sweepers between and among the various States of the United States, the Territories thereof, the District of Columbia, and foreign countries.

PAR. 3. That in the course of its business of manufacturing and selling vacuum sweepers in interstate commerce, the respondent, the Hoover Suction Sweeper Co., within the year last past has given and offered to give employees and salesmen of dealers who handle and sell the products of respondent and those of certain of its competitors cash bonuses and prizes as an inducement to influence such employees or salesmen to push the sale of respondent's products.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts under the circumstances therein set forth are unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondent, the Hoover Suction Sweeper Co., having entered its appearance by C. G. Herbruck, its attorney, duly authorized and empowered to act in the premises, and having filed its answer and thereafter having made, executed, and filed an agreed statement of facts in which it stipulated and agreed that the Federal

Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony, and proceed forthwith upon the same, and to make and enter its report stating its findings as to the facts, its conclusions and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission having made and entered its report stating its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered* that the respondent, its officers, agents, representatives, servants and employees cease and desist from directly or indirectly—

Giving or offering to give cash bonuses or prizes to employees or salesmen of dealers who handle and sell vacuum sweepers of the respondent and of one or more of the respondents' competitors, when such employees or salesmen have been instrumental in making a sale of vacuum sweepers manufactured by the respondent.

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FEDERAL TRADE COMMISSION *v.* C. R. FENTON  
AND F. P. FENTON, COPARTNERS, STYLING  
THEMSELVES STANDARD SOAP MANUFACTURING CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 260.—May 27, 1919.

SYLLABUS.

Where a concern engaged in the manufacture and sale of soap and kindred products gave and offered to give to employees of customers and of competitors' customers, without the knowledge and consent of their employers, gratuities, including money and other

things of value, as an inducement to influence their employers to purchase its goods or to refrain from dealing with its competitors: *Held*, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that C. R. Fenton and F. P. Fenton, copartners, doing business under the firm name and style of Standard Soap Manufacturing Co., hereinafter referred to as respondents, have been for more than one year last past using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondents, C. R. Fenton and F. P. Fenton, are copartners doing business at Woonsocket, in the State of Rhode Island, under the firm name and style of Standard Soap Manufacturing Co., and are now and for more than one year last past have been engaged in manufacturing and selling soap and kindred products throughout the States and Territories of the United States, and at all times herein mentioned said respondents have carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That, in the course of their business of manufacturing and selling soap and kindred products throughout the States and Territories of the United States, the respondents, for more than one year last past, have been giving and offering to give to employees of both their customers and prospective customers and their competitors' customers and prospective customers, without the knowledge and consent of their employers, gratuities such as money and other

things of value, as an inducement to influence their respective employers to purchase or contract to purchase from the respondents, soap and kindred products, or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondents.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondents, C. R. Fenton and F. P. Fenton, copartners, doing business under the firm name and style of Standard Soap Manufacturing Co., have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public and fully stating its charges in this respect, and the respondents having entered their appearance by James H. Rickard, jr., their attorney, and having filed their amended answer admitting that the matters and things alleged in the said complaint are true in the manner and form therein set forth, and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report, stating its findings as to the facts, and its order disposing of this proceeding without the introduction of testimony in support of the same and waiving any and all right to the introduction of such testimony, the Commission makes this report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondents, C. R. Fenton and F. P. Fenton, are copartners, doing business at Woonsocket, in the State of Rhode Island, under the firm name and style of Standard Soap Manufacturing Co., and for more than one year last past have been engaged in the business of manufacturing and selling soap and kindred prod-

ucts throughout the States and Territories of the United States in direct competition with other persons, firms, co-partnerships, and corporations manufacturing and selling like products.

PAR. 2. That for more than one year last past, the respondents have given and offered to give employees of both their customers and prospective customers, and their competitors' customers and prospective customers, without the knowledge and consent of their employers, gratuities, such as money and other things of value, as an inducement to influence their employers to purchase or to contract to purchase from the respondents, soap and kindred products, or to influence such customers to refrain from dealing or contracting to deal with competitors of respondents.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to facts in paragraph 2, and each and all of them, are under the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondents having entered their appearance by James H. Rickard, jr., their attorney, and having filed their amended answer admitting that the matters and things alleged and contained in the said complaint are true in the manner and form therein set forth and agreeing and consenting that the Commission shall forthwith proceed to make and enter its report stating its findings as to the facts and its order disposing of this proceeding without the introduction of testimony in support of the same, and waiving any and all right to the introduction of such testimony and the Commission having made and filed its report containing the findings as to the facts and its conclusions that the respondents have violated section 5 of an

act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered*, that the respondents, C. R. Fenton and F. P. Fenton, copartners, doing business under the firm name and style of Standard Soap Manufacturing Co., and their agents, servants, and employees, cease and desist from directly or indirectly—

Giving or offering to give employees of their customers or prospective customers or those of their competitors' customers or prospective customers as an inducement to their influencing their employers to purchase or to contract to purchase from the respondents, soap and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondents, without other consideration therefor, money and other things of value.

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## FEDERAL TRADE COMMISSION *v.* ROME SOAP MANUFACTURING CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS, APPROVED SEPTEMBER 26, 1914.

Docket No. 261.—May 27, 1919.

### SYLLABUS.

Where a corporation engaged in the manufacture and sale of soap and kindred products gave and offered to give to employees of customers, gratuities, entertainment, and presents, as an inducement for them to influence their employers to purchase its goods or to refrain from dealing with its competitors:

*Held*, That such gifts and offers to give, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Rome Soap Manufacturing Co., hereinafter referred to as respond-

ent, has been for more than a year last past, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, the Rome Soap Manufacturing Co., is a corporation organized and existing and doing business under and by virtue of the laws of the State of New York, having its principal office and place of business at the city of Rome, in the State of New York, and is now and for more than one year last past has been engaged in manufacturing and selling soap and kindred products throughout the States and Territories of the United States, and that at all times hereinafter mentioned, the respondent has carried on and conducted such business in direct competition with other persons, firms, copartnerships, and corporations manufacturing and selling like products.

PAR. 2. That in the course of its business of manufacturing and selling soap and kindred products throughout the States and Territories of the United States, the respondent, for more than one year last past has been giving and offering to give, to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, as an inducement to influence their employers to purchase or contract to purchase from the respondent, soap and kindred products, without other consideration therefor, gratuities such as liquor, cigars, meals, valuable presents, and entertainment.

PAR. 3. That in the course of its business of manufacturing and selling soap and kindred products, throughout the States and Territories of the United States, the respondent, for more than one year last past, has been paying and offering to pay, to employees of both its customers and prospective customers, and its competitors' customers and prospective customers, without the knowledge and consent of their employers, sums of money as an inducement to influence their said employers to purchase or contract to purchase from



the respondent, soap and kindred products, or to influence such customers to refrain from dealing or contracting to deal with competitors of the respondent.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondent, Rome Soap Manufacturing Co., has been for more than one year last past using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purpose," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent having entered its appearance by McMahon & McMahon, its attorneys, duly authorized and empowered to act in the premises, and having filed its answer admitting that certain of the matters and things alleged in the said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts which has been heretofore filed in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case and in lieu of testimony, and shall forthwith thereupon make its report stating its findings as to the facts, its conclusions and its order disposing of this proceeding without the introduction of testimony or the presentation of argument; therefore, the Federal Trade Commission now makes and enters this its report stating its findings as to the facts and its conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Rome Soap Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal offices and place of business located at the town of Rome, in said State; that the said respondent is now and for more than one year last past has been engaged

in the manufacture and sale of soap and kindred products among the several States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That in the course of its business of manufacturing and selling soap and kindred products in interstate commerce, the respondent, Rome Soap Manufacturing Co., for more than one year last past has given and offered to give to employees of customers and prospective customers as an inducement to influence their employers to purchase or to contract to purchase from respondent soap and kindred products without other consideration therefor, gratuities such as liquors, cigars, meals, valuable presents, and entertainment.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts under the circumstances therein set forth are unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST

The Federal Trade Commission having issued and served its complaint herein, and the respondent, Rome Soap Manufacturing Co., having entered its appearance by McMahon & McMahon, its attorneys, duly authorized and empowered to act in the premises, and having filed its answer and thereafter having made, executed, and filed an agreed statement of facts in which it stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony and proceed forthwith upon the same, and to make and enter its report, stating its findings as to the facts, its conclusions, and its order without the introduction of testimony, and waiving therein any and all right to require the introduction of testimony or the presentation of argument in support of the same, and the Federal Trade Commission

having made and entered its report stating its findings as to the facts and its conclusions that the respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered*, that the respondent, its officers, agents, representatives, servants, and employees cease and desist from directly or indirectly—

1. Giving or offering to give employees of its customers or prospective customers or those of its competitors' customers or prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent soap and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, gratuities, such as liquors, cigars, meals, valuable presents, and other personal property.

2. Giving and offering to give employees of its customers and prospective customers or those of its competitors' customers or prospective customers as an inducement to influence their employers to purchase or to contract to purchase from the respondent soap and kindred products, or to influence such employers to refrain from dealing or contracting to deal with competitors of the respondent, without other consideration therefor, entertainment, consisting of amusements or diversions of any kind whatsoever.

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## FEDERAL TRADE COMMISSION *v.* CHICAGO MILL WORKS SUPPLY CO.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket No. 267.—May 27, 1919.

### SYLLABUS.

Where a corporation engaged in the manufacture and sale of lumber and building materials and belonging to the class usually referred to as "catalogue or mail-order houses," as distinguished from so-called "regular dealers"—

(a) Falsely represented through advertisements and circular letters that—

1. It saves for all purchasers of its products 25 per cent to 50 per cent of the cost of such commodities;
  2. Builders, contractors, and carpenters can and do reduce the cost of building one-half by purchasing its materials;
  3. Its agents, one or more of whom are located in each town or locality, are charged the same price for materials as are charged its other customers;
  4. Certain competitors, the "regular dealers," are members of a lumber trust, and, by implication, that such competitors fix and maintain prices; and
- (b) Paid a secret commission to local contractors, builders, and carpenters, as an inducement for them to influence others in the purchase of its products:

*Held*, That such advertisements and the payment of such commissions, under the circumstances set forth, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

### COMPLAINT.

The Federal Trade Commission, having reason to believe, from a preliminary investigation made by it, that the Chicago Millwork Supply Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce, in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Chicago Millwork Supply Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal office and place of business at the city of Chicago, in said State, now, and for more than two years last past, engaged in the manufacture and sale of lumber and building materials among the several States and Territories of the United States and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That there exist certain commercial establishments in all or most of the States of the United States which now are, and for several years last past have been engaged in selling lumber and building materials in interstate commerce through the medium and means of yards located in different cities of the various States, and are usually referred to in the lumber industry as "regular dealers," as distinguished from so-called catalogue or mail-order houses; that such establishments usually sell lumber and building materials in the community wherein they are located, and that such establishments purchase lumber and building materials in large quantities in interstate commerce from manufacturers and wholesalers.

PAR. 3. That the respondent in the course of its said business makes use of circular letters to the trade and other advertising matter which contain certain false statements derogatory of so-called "regular dealers" in lumber, and also false and misleading statements concerning its own business methods and alleged benefits which the public might derive from trading with respondent. That among such false and misleading statements are statements to the effect that purchasers of lumber and building materials from respondent may effect a full saving of 25 to 50 per cent of the cost of such commodities; that local dealers are charged the same prices for goods purchased for resale as are charged to customers of respondent; that builders often find that they can reduce the cost of building one-half by buying materials from respondent; that respondent does not belong to a trust, thereby imputing that the "regular dealers" do belong to a trust.

PAR. 4. That in the course of its business of selling lumber and building materials in interstate commerce the respondent, for more than two years last past, has secretly and without the knowledge of the purchaser or consumer offered and paid to local contractors, builders, and carpenters a bonus or so-called commission as an inducement to influence such contractors and builders to push or favor the sale of respondent's lumber and building materials over those of its competitors.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having reason to believe that the above-named respondent, Chicago Millwork Supply Co., has been, within the two years last past, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect; and the respondent, Chicago Millwork Supply Co., having entered its appearance by H. B. Munger, Esq., its president, duly authorized and empowered to act in the premises, and having filed their answer admitting that certain of the matters and things alleged in said complaint are true in the manner and form therein set forth, and denying others therein contained, and thereafter having made and executed an agreed statement of facts, which has been heretofore filed in which it is stipulated and agreed by the respondent that the Federal Trade Commission shall take such agreed statement of facts as evidence in this case, and in lieu of testimony, and shall forthwith thereupon make and enter its report, stating its findings as to the facts and its conclusions, and its order disposing of this proceeding, without the introduction of testimony or the presentation of argument; therefore the Federal Trade Commission now makes and enters this, its report, stating its findings as to the facts and its conclusions.

### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Chicago Millwork Supply Co., is now and for more than two years last past has been a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, in said State, engaged in the business of manufacturing and selling lumber and building materials, in interstate commerce, in competition with

other persons, firms, copartnerships, and corporations, similarly engaged.

PAR. 2. That there are certain commercial establishments in many States of the United States which now and for many years have been engaged in selling lumber and building material in interstate commerce through the medium of yards, located in different cities of the various States. That such establishments are usually known in the lumber industry as "regular dealers" in contradistinction of catalog or mail order houses; that such "regular dealers" sell their building materials usually in the community wherein they are located, and that such sales are in competition with said catalog or mail order houses.

PAR. 3. That respondent, Chicago Millwork Supply Co., did prior to, but not since, the first day of April, 1918, circulate to the trade statements and advertisements by means of catalogs and letters through the various States and Territories of the United States wherein it was represented that—

(a) Respondent saves for all purchasers of its products 25 to 50 per cent of the cost of such commodities.

(b) That builders, contractors, and carpenters find they can and do reduce the cost of building by one-half by purchasing materials from respondent.

(c) That certain competitors of respondent, the "regular dealers," are members of the Lumber Trust, thereby imputing such competitors fix and maintain excessive prices for building material.

That such statements and advertisements are in truth false and do deceive and mislead the purchasing public.

PAR. 4. That respondent has in each town or locality, one or more representatives, the number of such representatives depending upon the population; that respondent has published and circulated among the trade catalogs, letters, and advertisements representing that their local representative is charged the same price for materials purchased for resale as are charged to customers of respondent; that such representation, as made, was false and misleading and deceived purchasers and the general public.

PAR. 5. That respondent, Chicago Millwork Supply Co., has within the two years last past issued a printed form of

cash certificate to contractors and carpenters which calls for an allowance on future purchases of respondent's materials of an amount equal to 5 per cent of the materials previously sold to said contractor or carpenter, or directly through their efforts; that the payment of such allowance is and has been a common practice among wholesale and retail dealers in building materials, and such allowances were paid as an inducement to influence contractors and carpenters to favor the sale of respondent's building materials over those of its competitors.

That respondent, Chicago Millwork Supply Co., obtains approximately 5 per cent of its business by paying the said allowances, or discount, to carpenters and contractors secretly and without the knowledge of the consumer.

#### CONCLUSIONS.

From the foregoing findings the Commission concludes that the methods of competition set forth in paragraphs 3, 4, and 5 are, under the circumstances therein set forth, in violation of the provisions of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and the respondent, Chicago Millwork Supply Co., having entered its appearance by H. B. Munger, Esq., its president, duly authorized and empowered to act in the premises, and having filed their answer, and thereafter having made, executed, and filed an agreed statement of facts, in which they stipulated and agreed that the Federal Trade Commission should take such agreed statement of facts as the evidence in this case and in lieu of testimony and proceed forthwith upon the same to make and enter its report, stating its findings as to the facts and its conclusions and its order without the introduction of testimony, and waiving therein any and all right to require the introduction



of testimony or the presentation of argument in support of the same, and the Federal Trade Commission, having made and entered its findings as to the facts, and its conclusions that the Chicago Millwork Supply Co. has violated section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered* that the respondent, Chicago Millwork Supply Co., its officers, agents, representatives, servants, and employees, cease and desist from directly or indirectly—

(1) Publishing and circulating among the trade statements in catalogues, letters, and advertisements which represent—

(a) Respondent saves for all purchasers of its product 25 to 50 per cent of the cost of such commodities.

(b) That builders, contractors, and carpenters find they can and do reduce the cost of building by one-half by purchasing materials from respondent.

(c) That certain competitors of respondent, the "regular dealers," are members of the Lumber Trust, thereby imputing such competitors fix and maintain excessive prices for building material.

(d) That respondent's agent is charged the same price for materials for resale as are charged to customers of respondent.

Or any statements similar thereto which tend to deceive and mislead purchasers and the general public.

(2) Paying or offering to pay, to local contractors, builders, and carpenters a bonus or a commission without the knowledge of the purchaser or consumer as an inducement to influence such contractors, builders, and carpenters to push or favor the sale of respondent's lumber and building materials over those of its competitors.

**FEDERAL TRADE COMMISSION v. C. L. CHASE,  
TRADING UNDER THE NAME AND STYLE OF  
CHASE SHOE CO.**

**COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.**

**Docket No. 270.—May 27, 1919.**

**SYLLABUS.**

Where a dealer in shoes and footwear falsely represented—

- (a) That he was a shoe manufacturer and a shoe manufacturers' distributor;
- (b) That shoes sold by him passed directly from the factory to the purchaser;
- (c) That his only thought was "to produce the best shoes in the world for the money;" and
- (d) That his life work had been the study of manufacturing and distributing shoes to the consumer:

*Held*, That such misrepresentations constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

**COMPLAINT.**

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that C. L. Chase, trading under the name and style of the Chase Shoe Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondent, C. L. Chase, is now and was at all times hereinafter mentioned, operating a business at 123 Nicollet Avenue, in Minneapolis, Minn., with a branch at 817 Broadway in Kansas City, Mo., under the trade name and style of the Chase Shoe Co.; that the business so conducted consists of the sale in commerce among the several States of the United States of shoes at retail, upon mail orders exclusively.

PAR. 2. That said respondent in the course of his said business makes use of catalogues and other advertising matter, which are sent to his customers and prospective customers, which contain false and misleading statements concerning his business and alleged benefits which the public might derive from trading with respondent. That among such false and misleading statements are statements that respondent is a shoe manufacturer and statements to the effect that respondent is a shoe manufacturer's distributor and that shoes sold by respondent are direct from factory to the purchaser from respondent, whereas respondent does not manufacture shoes and is not the agent for any manufacturer, but buys shoes direct from manufacturers in wholesale quantities and stores same in his own warehouse, from which warehouse orders for shoes sold by respondent are filled in due course of his said business; that by giving his entire attention to manufacturing and selling shoes by mail to the consumer for many years, he believes he is able to furnish better shoes for the same money than any other concern on earth. That such statements deceive and mislead customers of respondent and the public.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, alleging that it had reason to believe that respondent was using unfair methods of competition in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect thereof would be to the interest of the public, and respondent having entered his appearance and having stipulated with the Commission by its attorneys that the facts contained in the agreed statement of facts, filed herein, shall constitute all of the evidence in this proceeding, and that the Commission shall upon such agreed statement of facts make its report and findings as to the facts and conclusion, and respondent having waived the right to introduce further

evidence or argument, the Commission being advised in the premises, now on this 27th day of May, 1919, on the complaint and said agreed statement of facts, makes its report and states its findings of fact and conclusion as follows:

## I.

That respondent, C. L. Chase, trading under the name and style of Chase Shoe Co., and having his principal place of business at 123 Nicollet Avenue, Minneapolis, Minn., was on the 15th day of April, 1919, and during a period of more than six months prior thereto, engaged in the business of selling shoes and other footwear, at retail, in commerce among the several States of the United States; that during said period other persons and corporations were engaged in selling shoes and other footwear in interstate commerce in competition with respondent.

## II.

That in the course of his said business and during the period aforesaid, respondent circulated in commerce among the several States of the United States catalogues and other advertising matter which contained certain statements respecting the character of respondent's business and which were in effect as follows:

- (1) That respondent was a shoe manufacturer.
- (2) That respondent was a shoe manufacturer's distributor.
- (3) That shoes sold by respondent passed directly from the factory to the purchaser.
- (4) That respondent's only thought was "to produce the best shoes in the world for the money."
- (5) That respondent's life work has been the study of manufacturing and distributing shoes to the consumer.

That during the period aforesaid respondent did not at any time manufacture shoes nor act as a distributing agent of any manufacturer of shoes, and that by reason thereof the statements above described were false and misleading, and

had the effect of deceiving and misleading customers of respondent and other members of the public.

#### CONCLUSION.

That the use of the statements described in Paragraph II of the foregoing findings of fact, constituted, under the circumstances set forth therein, an unfair method of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and respondent having entered its appearance and having stipulated with the Commission by its attorneys, that upon the agreed statement of facts filed herein, the Commission shall forthwith make and enter its findings of fact and order, and the Commission on the date hereof having made and filed a report containing its findings as to the facts and its conclusion that respondent has violated the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby made a part hereof: Now, therefore,

*It is ordered*, that respondent, C. L. Chase, trading under the name and style of Chase Shoe Co., his agents and employees, cease and desist from circulating in commerce among the several States of the United States, in catalogues, in advertising matter, or otherwise, statements to the effect that respondent is a shoe manufacturer, or that respondent is a shoe manufacturer's distributor, or that shoes sold by respondent pass directly from the factory to the purchaser, or that respondent's only thought is to produce the best shoes in the world for the money, or that respondent's life work has been the study of manufacturing and distributing shoes, or other false and misleading statements of similar tenor and effect.

**FEDERAL TRADE COMMISSION v. GREGORY  
FURNITURE MANUFACTURING CO.**

**COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.**

Docket No. 216.—June 23, 1919.

**SYLLABUS.**

Where a corporation engaged in the manufacture and sale of furniture—

- (a) Sold the same to dealers upon the agreement or understanding that they should resell the same at prices suggested by it;
  - (b) Refused to sell to dealers because of their failure to adhere to its system of resale-price maintenance; and
  - (c) Failed to fill dealers' orders promptly, filled dealers' orders only in part, and otherwise discriminated against dealers because of their failure to adhere to its system of resale-price maintenance;
- Held*, That a scheme of price maintenance, substantially as set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

**COMPLAINT.**

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Gregory Furniture Manufacturing Co., hereinafter referred to as the respondent, has been, and is, using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondent, Gregory Furniture Manufacturing Co., is now, and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at the city of Tacoma, in said State, now, and for more than two years last past, engaged in the business of manufacturing and selling dining-room furniture and

had the effect of deceiving and misleading customers of respondent and other members of the public.

#### CONCLUSION.

That the use of the statements described in Paragraph II of the foregoing findings of fact, constituted, under the circumstances set forth therein, an unfair method of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission, having issued and served its complaint herein, and respondent having entered its appearance and having stipulated with the Commission by its attorneys, that upon the agreed statement of facts filed herein, the Commission shall forthwith make and enter its findings of fact and order, and the Commission on the date hereof having made and filed a report containing its findings as to the facts and its conclusion that respondent has violated the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby made a part hereof: Now, therefore,

*It is ordered*, that respondent, C. L. Chase, trading under the name and style of Chase Shoe Co., his agents and employees, cease and desist from circulating in commerce among the several States of the United States, in catalogues, in advertising matter, or otherwise, statements to the effect that respondent is a shoe manufacturer, or that respondent is a shoe manufacturer's distributor, or that shoes sold by respondent pass directly from the factory to the purchaser, or that respondent's only thought is to produce the best shoes in the world for the money, or that respondent's life work has been the study of manufacturing and distributing shoes, or other false and misleading statements of similar tenor and effect.

**FEDERAL TRADE COMMISSION v. GREGORY  
FURNITURE MANUFACTURING CO.**

**COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.**

Docket No. 216.—June 23, 1919.

**SYLLABUS.**

Where a corporation engaged in the manufacture and sale of furniture—

- (a) Sold the same to dealers upon the agreement or understanding that they should resell the same at prices suggested by it;
- (b) Refused to sell to dealers because of their failure to adhere to its system of resale-price maintenance; and
- (c) Failed to fill dealers' orders promptly, filled dealers' orders only in part, and otherwise discriminated against dealers because of their failure to adhere to its system of resale-price maintenance;

*Held*, That a scheme of price maintenance, substantially as set forth, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

**COMPLAINT.**

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Gregory Furniture Manufacturing Co., hereinafter referred to as the respondent, has been, and is, using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of the act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondent, Gregory Furniture Manufacturing Co., is now, and was at all times hereinafter mentioned, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at the city of Tacoma, in said State, now, and for more than two years last past, engaged in the business of manufacturing and selling dining-room furniture and



library tables throughout the various States of the United States, the Territories thereof, and the District of Columbia, in direct competition with other persons, firms, copartnerships, and corporations similarly engaged.

PAR. 2. That the respondent, Gregory Furniture Manufacturing Co., in the conduct of its business, manufactures such furniture so sold by it in its factory located at the city of Tacoma, State of Washington, and purchases and enters into contracts of purchase for the necessary component materials needed therefor, in different States and Territories of the United States, transporting the same through other States of the United States in and to said city of Tacoma, where they are made and manufactured into the finished product and sold and shipped to purchasers thereof; that after such products are so manufactured, they are continuously moved to, from, and among other States and Territories of the United States and the District of Columbia, and there is continuously, and has been at all times hereinafter mentioned, a constant current of trade in commerce in said furniture between and among the various States of the United States, the Territories thereof, and the District of Columbia, and especially to and through the city of Tacoma, State of Washington, and therefrom to and through other States of the United States, the Territories thereof, and the District of Columbia.

PAR. 3. That with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of its furniture in interstate commerce, the respondent, Gregory Furniture Manufacturing Co., has adopted and maintains a system of fixing prices at which its products shall be resold by dealers, with the effect of securing the trade of dealers and of enlisting their active cooperation in enlarging the sale of its price-maintained product, to the prejudice of competitors who do not fix and require the maintenance of resale prices of their product, and with the effect of eliminating competition in price among the dealers in its product, and thereby depriving dealers of their right to sell such product at such prices as they may deem adequate and warranted by their selling efficiency and with other effects; and that for the purpose of maintaining said stand-

ard resale prices and of inducing and compelling its customers to maintain and keep such standard prices, respondent has for more than two years last past refused, and is still refusing, to sell its product to customers or dealers who will not agree to maintain such specified standard resale prices, or who do not resell such product at the specified standard selling prices so fixed and determined by the respondent as aforesaid.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, Gregory Furniture Manufacturing Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and fully stating its charges in that respect, and the respondent having entered its appearance by Raymond J. McMillan, its attorney, and said attorney having signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said statement of facts should be taken by the Commission with the same force and effect as if testified to upon a hearing regularly had in this proceeding, and that the Commission might forthwith proceed, upon such agreed statement of facts, to make and enter its report and findings as to the facts, its conclusions, and its order disposing of this proceeding; the Commission having duly considered the record and being fully advised in the premises, now makes its report and findings as to the facts and conclusions.

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Gregory Furniture Manufacturing Co., is a corporation organized, existing, and doing business under the laws of the State of Washington, and having its principal place of business in the city

PAR. 12. That the gross profit margins provided and allowed to retail dealers in the minimum selling prices furnished them by respondent as aforesaid had been approximately 80 per cent on all goods manufactured and sold by respondent.

PAR. 13. That the retail dealers in various States to whom respondent sells its products have varying selling expenses on the same volume of business and show varying efficiency management, and the net profit margins of said dealers in handling respondent's goods vary accordingly.

PAR. 14. That respondent has consented to the entry of an order by the Federal Trade Commission directing respondent to cease and desist from the practice of fixing resale prices on its products.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings as to the facts are, under the circumstances therein set forth, unfair methods of competition in interstate commerce and in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, Gregory Furniture Manufacturing Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect of such violation would be to the interest of the public, and fully stating its charges, and the respondent having entered its appearance by Raymond J. McMillan, its attorney, and having duly filed its answer, and said attorney having duly signed and filed an agreed statement of facts wherein and

whereby it was stipulated and agreed that said statement of facts should be taken by the Commission in lieu of testimony herein, and that the Commission might forthwith proceed upon such agreed statement of facts to enter its report and its findings as to the facts, its conclusions, and its order disposing of this proceeding; and the Commission on the date hereof having made and filed its report containing its findings as to the facts and its conclusions that respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered* that the respondent, Gregory Furniture Manufacturing Co., and its officers, directors, servants, and employees cease and desist from directly or indirectly recommending, requiring, or by any means whatsoever bringing about the resale of its products by dealers according to any system of prices fixed or established by respondent, and more particularly by any or all of the following means:

(1) Securing or entering into agreements or understandings of any kind with dealers handling its products to the effect that such dealers in reselling its products will adhere to any system of resale prices fixed and established by respondent.

(2) Insisting or requesting that dealers mark all or any of the goods bought from respondent according to any system of minimum selling prices or other resale prices fixed and established by respondent.

(3) Failing to fill orders promptly, filling orders only in part, or otherwise discriminating against any dealer because of failure to adhere to any system of resale prices.

(4) Discriminating in any way in favor of any dealer because of adherence to any such system of resale prices.

(5) Refusing to sell to any dealer because of failure to adhere to any system of resale prices.

(6) Carrying out or causing others to carry out a price maintenance policy by any method whatsoever.

**FEDERAL TRADE COMMISSION v. MISHAWAKA  
WOOLEN MANUFACTURING CO.**

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND SECTION 2 OF THE ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket No. 19.—June 30, 1919.

**SYLLABUS.**

Where a corporation engaged in the manufacture and sale of woolen and rubber footwear—

**I.**

- (a) Established minimum resale prices, below which purchasers of its product were required not to sell, which prices were higher than necessary to afford the more efficient retailers a profit on its product, and in pursuance of the maintenance of said minimum resale prices;
- (b) Procured a majority of its customers when ordering goods to sign agreements specifically agreeing not to sell its products at prices lower than the established resale prices fixed by it;
- (c) Solicited and obtained the cooperation of its customers in reporting instances where its products were being advertised and sold below the resale prices fixed by it;
- (d) Discontinued the sale of its products to those who failed to maintain such resale prices; and
- (e) Maintained a card index of what was termed undesirable customers, this undesirability generally arising from the fact that the customer had persisted in selling the respondent's goods below its fixed resale prices:

**II.**

Discontinued the making of written contracts with its customers and of soliciting its customers to report instances of price-cutting, but

- (a) Notified customers of the price at which its products must be resold and that it would refuse to sell to any customer who persisted in selling at less than its fixed resale prices;
- (b) Refused to sell, or discontinued selling to such customers as were found to have cut its resale prices; and
- (c) Constantly urged that the dealer take the full profit suggested by it;

**Held,** That such systems of price maintenance, substantially as described, constituted unfair methods of competition in violation of section 5 of the act of September 26, 1914.

## COMPLAINT.

## I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Mishawaka Woolen Manufacturing Co., hereinafter referred to as respondent, has been, and is, using unfair methods of competition in interstate commerce in violation of the provisions of section 3 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the above-named respondent, Mishawaka Woolen Manufacturing Co., is now and was at all the times hereinafter mentioned, a corporation organized and existing under and by virtue of the laws of the State of Indiana, having its principal office and place of business at the city of Mishawaka, in said State, and extensively engaged at said city in the manufacture of woolen and rubber goods, and in the sale and shipment of such commodities to persons, co-partnerships, and corporations in other States and Territories of the United States and in the District of Columbia.

PAR. 2. That the respondent, Mishawaka Woolen Manufacturing Co., as a means of procuring the trade of dealers and of enlisting their active cooperation in encouraging the sale of its goods and for the purpose of eliminating competition in price among the dealers in its goods and thereby depriving dealers of their right to sell such goods at such prices as they may deem adequate and warranted by their selling efficiency, and for other purposes, has adopted and maintains a system of fixing a schedule of standard prices at which the goods manufactured and sold by it shall be resold by the purchasers thereof, and requires such purchasers to agree to maintain or resell such goods at such standard selling prices, and that for the purposes of maintaining such standard resale prices, and of inducing and coercing its customers to maintain such standard prices, the respondent has

for more than two years last past refused and still refuses to sell such goods to customers who will not agree to maintain such standard selling prices, or who do not resell such goods at the standard selling prices so fixed by the respondent.

PAR. 3. That in furtherance of said system of the maintenance of the resale prices of the goods handled and sold by it, the respondent has systematically entered into, and does systematically enter into, an agreement or understanding with each of its customers that the customer shall report to it instances of "price cutting" on the part of any other customer, and that if the customer so reported be found by respondent to be in fact price cutting, the respondent will refuse to continue to sell its goods to such "price cutters," and that the respondent, acting and cooperating with reporting customers, does thereupon, if it finds upon investigation by it that such report is true, refuses to continue to sell its goods to such "price cutter" and that as a matter of fact, the respondent, acting pursuant to such system and such arrangement or understanding with reporting customers, has during a period of at least two and one-half years last past refused, in many instances, and still does refuse, to continue to sell its goods to customers who violate such agreement to maintain the standard selling prices so fixed by the respondent.

## II.

And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Mishawaka Woolen Manufacturing Co., hereinafter referred to as respondent, has been and is violating the provisions of section 2 of the act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect, on information and belief, as follows:

PARAGRAPH 1. That the respondent, Mishawaka Woolen Manufacturing Co., is a corporation organized and existing under and by virtue of the laws of the State of Indiana, having its principal office and place of business at the city of

Mishawaka, in said State, and is now and was at all times hereinafter mentioned engaged in manufacturing and selling woolen and rubber goods in commerce among the several States and Territories of the United States.

PAR. 2. That the respondent, the Mishawaka Woolen Manufacturing Co., for several years last past, in the course of interstate commerce, has discriminated in price, and is now discriminating in price between different purchasers of the goods manufactured, handled, and sold by it, which goods are sold for use, consumption, or resale within the United States or the Territories thereof, or the District of Columbia, and that the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, Mishawaka Woolen Manufacturing Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect to such alleged violation would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by Messrs. Angell, Bodman & Turner, its attorneys, and having filed its answer; and the attorneys for both parties having thereafter signed and filed an agreed statement of facts, with exhibits thereto attached, and having stipulated that the same should for the purposes of this proceeding be considered and treated as testimony and evidence herein in all respects as fully as though testified to in a contested proceeding, and said agreed statement of facts and stipulation, together with said exhibits thereto attached, having been duly offered in evidence by the attorneys for the Commission in support of the charges in said complaint, and the respondent having offered evidence



in support of its answer, and the attorneys for the Commission and for the respondent having submitted briefs as to the law and the facts in said proceeding, and the Commission having duly considered the record and being fully advised in the premises, now makes this its report and findings as to the facts and conclusions of law:

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That respondent, Mishawaka Woolen Manufacturing Co., was at all times hereinafter mentioned, and still is, a corporation organized and existing under the laws of the State of Indiana, having its principal office and place of business at Mishawaka in said State.

PAR. 2. That at all of said times respondent was engaged at Mishawaka aforesaid in manufacturing articles of woolen and rubber footwear and in selling and shipping such articles in commerce among the several States of the United States; that other persons and corporations were engaged in manufacturing similar products and in selling and shipping such products in interstate commerce in competition with respondent.

PAR. 3. That at the time of the commencement of this proceeding and during a period of more than two years prior thereto respondent's marketing policy was to distribute its products through retailers, and not through wholesale dealers or jobbers. That during said period substantially all of its products were sold by it directly to retail dealers throughout the United States; that the value of said products exceeded \$10,000,000 annually; and that the number of respondent's said retail customers was approximately 43,000, some of whom were themselves engaged in interstate commerce.

PAR. 4. That during a period of more than two years prior to January 1, 1918, respondent pursued a practice of establishing minimum resale prices, hereinafter known as the resale prices, below which all of its retail distributor customers were required not to sell the products manufactured by respondent. That a schedule or list of said resale prices was issued annually or more frequently and furnished by respondent to each of its distributors; that said distributors had notice from respondent and generally understood that respondent's practice was to sell only to those distributors maintaining the

resale prices. That for the purpose of enforcing the maintenance of said minimum resale prices by its said distributors during the period aforesaid respondent employed the following means, to wit:

(1) It procured a majority of its distributor customers to sign agreements in writing in connection with orders submitted by them to respondent for goods, whereby said customers expressly promised not to retail respondent's products either directly or indirectly at lower prices than the resale prices established by respondent. The signing of said agreement was in many instances a condition precedent to respondent's acceptance of an order for goods. And a large portion of respondent's total output of goods was sold subject to such agreements.

(2) It solicited and obtained the cooperation of its customers in reporting instances wherein its products were being advertised or sold below the resale prices thereof. Such reported instances were systematically investigated, and where the report was verified, respondent's regular practice was to request assurances in the form of an agreement in writing or otherwise against repetition of the act complained of, and in the event that sufficient assurance was not furnished, respondent's regular practice was to discontinue selling goods to the party in question. Action taken in any reported instance of price cutting was usually communicated by respondent to the informant who had reported such instance. In this manner informants cooperating with respondent succeeded in many cases in procuring the cutting off of their competitors' supply of respondent's products.

(3) It carried on at its principal office a routine correspondence, based on form letters, with respect to all cases coming to its attention wherein its goods had been sold below the resale price thereof, and in each case notified the customer complained of that unless he maintained the resale prices upon respondent's goods, respondent would cease to supply him with goods; it maintained at said office a card index of all persons reported to have cut prices on its products, which indicated the principal facts in each case, the substance of all correspondence relating thereto, the final status of the case, and which served the purpose of a me-

chanical aid in respondent's system of tabulating and for taking appropriate action in such cases.

(4) It maintained at said office a town card index of all customers and of numerous dealers not customers, of whom many were indicated to be "undesirable" customers. This "undesirability" in many cases arose from the fact that the dealer so designated had persisted in selling respondent's goods below the resale prices thereof.

That respondent's said policy of price maintenance was generally acquiesced in by its customers, and its resale prices were generally maintained.

PAR. 5. That at the time hereinbefore mentioned, retail dealers in respondent's products carried on business at costs ranging from 15 to 30 per cent of their gross sales; that the resale prices of respondent's products were adjusted so as to yield said retail dealers a gross profit margin ranging from a minimum of 24 per cent to a maximum of 30 per cent, depending upon the character of the goods, and that these margins in comparison with the aforesaid costs of 15 to 30 per cent assured the said dealers handling the products manufactured by respondent net profits ranging from zero to 15 per cent of their gross sales, depending on the character of the goods. That dealers generally, and especially the higher cost and less efficient dealers, prefer to handle the price-maintained products of respondent and were and are in sympathy with the respondent's policy and system of resale price maintenance, and materially aided and co-operated with respondent in the execution thereof.

PAR. 6. That at the times hereinbefore mentioned there were a number of competitors of respondent who did not adopt or pursue a policy of resale price maintenance.

PAR. 7. That on the 1st day of January, 1918, and subsequent to the commencement of this proceeding, respondent modified its practice regarding the subject of price maintenance in certain respects, as follows:

(1) It discontinued the use of written agreements with customers providing for the maintenance of resale prices, both in connection with orders for goods and otherwise, and instructed its salesmen to enter into no agreements with customers, oral or written, and to ask for no other assurance regarding price maintenance.

(2) It discontinued the practice of inviting or urging its customers to report instances wherein respondent's goods were being advertised or sold below the resale price thereof.

(3) It discontinued the card index described above (par. 4), but later, as testified to by its president, resumed its use.

PAR. 8. That since January 1, 1918, respondent has continued to notify customers selling its goods below the resale price thereof that if such action is persisted in respondent will furnish no further goods to such customers; that since said date, respondent has refused and still refuses to sell goods to practically all dealers failing to maintain the resale prices thereof.

PAR. 9. That the aforesaid gross profit margins were and are so adjusted as to induce a large number of retailers to handle the products of the respondent; and these margins were and are greater than would be necessary to enable the relatively lower cost and more efficient retailers, as referred to in paragraph 5 above, to resell and make a profit.

PAR. 10. That respondent constantly urges that retail distributors of its products shall take the full profit suggested by respondent, and publishes price lists showing the suggested resale prices and the gross profit margins to said retail distributors under such prices.

PAR. 11. That the effect of the said price maintenance system enforced as aforesaid has been and is—

(1) To secure for respondent, Mishawaka Woolen Manufacturing Co., on the sales of the products manufactured by it, the trade of retailers, and especially the relatively higher cost and more inefficient retailers as heretofore set out, by affording such dealers the assurance that said resale prices were and are universally maintained, and to enlist their active support and cooperation in enlarging the sale of its price maintained products to the prejudice of competing manufacturers who do not fix, require or enforce the maintenance of resale prices upon their products.

(2) To eliminate competition in prices among retailers handling the products manufactured by respondent, thus interfering with such retailers, and especially the relatively lower cost and more efficient establishments, in their sales of

respondent's products at prices which they may deem adequate and which are warranted by their costs and selling efficiency as heretofore set out, whereby such portions of the public as require the products of the respondent are compelled to pay enhanced prices therefor.

(3) To tend to force manufacturers who do not fix, require, or enforce the maintenance of resale prices and who compete with the respondent also to inaugurate, maintain, and enforce a system of resale prices upon their products in order to offset the preference of retailers for the price-maintained products of respondent, thus enabling such manufacturers as do not now maintain such resale prices to compete upon more equal terms with respondent and thereby tending to compel the public generally to pay enhanced prices for the products of such competing manufacturers also.

PAR. 12. That the allegation contained in Part II of the complaint in this proceeding that the respondent has violated section 2 of the Clayton Act is not sustained by the evidence.

#### CONCLUSION.

That the methods of competition described in the foregoing findings of fact in paragraphs 4, 5, 8, 9, and 10 constitute, under the circumstances set forth therein, unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondent, Mishawaka Woolen Manufacturing Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect to such

alleged violation would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by Messrs. Angell, Bodman & Turner, its attorneys, and having filed its answer; and the attorneys for both parties having thereafter signed and filed an agreed statement of facts, with exhibits thereto attached, and having stipulated that the same should for the purposes of this proceeding be considered and treated as testimony and evidence herein in all respects as fully as though testified to in a contested proceeding, and said agreed statement of facts and stipulation, together with said exhibits thereto attached, having been duly offered in evidence by the attorneys for the Commission in support of the charges in said complaint, and the respondent having offered evidence in support of its answer, and the attorneys for the Commission and for the respondent having submitted their briefs as to the law and facts in said proceeding, and the Commission on the date hereof having made and filed its report containing its findings as to the facts and its conclusion that respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered* that the respondent, Mishawaka Woolen Manufacturing Co., its officers, directors, agents, servants, and employees, cease and desist from fixing or controlling, or attempting to fix or control, the prices at which or in accordance with which its products shall be resold, by—

(1) Entering into contracts, agreements, or understandings with dealers requiring or providing for the maintenance of such prices;

(2) Cooperating with dealers in obtaining information for the purpose of enforcing the maintenance of such prices;

(3) Refusing or threatening to refuse to sell to dealers because of their failure to maintain such prices;

(4) Employing any other means directly or indirectly to bring about or enforce the resale of its products at such prices.

**FEDERAL TRADE COMMISSION v. BEECH-NUT  
PACKING CO.**

**COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF  
SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER  
26, 1914.**

**Docket No. 88.—June 30, 1919.**

**SYLLABUS.**

Where a corporation engaged in the manufacture and sale of chewing gum and food products—

- (a) Indicated to distributors the prices at which the same should be resold, which prices provided such a large margin of profit for the distributors that all dealers, however inefficient, could make a profit on its sale;
- (b) Refused to sell its products to distributors who failed to adhere to its system of resale prices and to distributors who sold to other distributors who did not maintain such prices;
- (c) Adopted a system of marking its goods which enabled it to ascertain where goods sold at cut prices had been purchased and to cut off the seller from further purchases of goods from it or from distributors handling its products; and
- (d) Secured and sought to secure the cooperation of distributors in maintaining and enforcing its system of resale prices, especially by having them report to it all distributors who failed to adhere to its resale prices:

**Held,** That a scheme of resale-price maintenance, substantially as described, constituted an unfair method of competition in violation of the act of September 26, 1914.

**COMPLAINT.**

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it, that the Beech-Nut Packing Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issue this complaint, stating its charges in that respect, on information and belief as follows:

PARAGRAPH 1. That the respondent, Beech-Nut Packing Co. is now and was at all times hereinafter mentioned, a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, having its principal factory, office and place of business located at the town of Canajoharie, State of New York, now and for more than two years last past engaged in the manufacture and sale of chewing gum and food products among the several States of the United States, the Territories thereof and the District of Columbia, in direct competition with other persons, firms, copartnerships and corporations similarly engaged.

PAR. 2. That the respondent, Beech-Nut Packing Co., in the conduct of its business, manufactures such chewing gum so sold by it, in its factory located at the town of Canajoharie, State of New York, and purchases and enters into contracts of purchase for the necessary component materials needed therefor, in different States and Territories of the United States, causing the same to be transported to its factory where they are made into the finished product, sold and shipped to the purchasers thereof; that after such products are so manufactured, they are continuously moved to, from, and among other States and Territories of the United States, the District of Columbia, and foreign countries, and there is continuously, and has been, at all times hereinafter mentioned, a constant current of trade and commerce in the said products between and among the various States and Territories of the United States, and the District of Columbia, and especially to and through the town of Canajoharie, State of New York, and therefrom to and through other States and Territories of the United States and the District of Columbia.

PAR. 3. That with the intent, purpose, and effect of stifling and suppressing competition in the manufacture, marketing, and sale of its products in the course of such commerce, and as a means of securing the trade of dealers and obtaining their aid and cooperation in enlarging the sale of its products, and with the purpose of eliminating competition in the selling price among the various dealers in its



products and thereby depriving the dealers of their freedom to sell such products at prices which, in their judgment, would be warranted by trade conditions and for other purposes, the respondent has fixed and maintained certain specified standard prices at which the products manufactured and sold by it shall be resold by the purchaser thereof, and requires its purchasers to agree to maintain or resell such products at such standard selling prices; and that for the purpose of maintaining said standard resale prices and of inducing and compelling its customers to maintain and keep such standard prices, the respondent, for more than three months last past, has refused and is still now refusing to sell its products to customers or dealers who will not agree to maintain such specified standard resale prices, or who do not resell such products at the specified standard selling prices so fixed and determined by the respondent as aforesaid.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondent, Beech-Nut Packing Co., has been and now is using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect to such alleged violation would be to the interest of the public, and fully stating its charges in that respect, and the respondent having entered its appearance by Charles Wesley Dunn, its attorney, and having filed its answer, and it having been thereafter duly stipulated between the parties that said complaint shall be deemed amended in certain respects and that respondent's said answer should stand as its answer to said complaint as so amended, and the attorneys for both parties having duly signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that said statement of facts should be taken by the Commission in lieu of testimony

herein and that the Commission might forthwith proceed upon such agreed statement of facts to make and enter its report and findings as to the facts, its conclusions of law, and its order disposing of this proceeding; the Commission having duly considered the record and being fully advised in the premises, now makes its report and findings as to the facts and conclusions of law:

#### FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Beech-Nut Packing Co., is a corporation organized and doing business under the laws of the State of New York, and having its principal office and place of business in the town of Canajoharie, State of New York, and is now, and for more than four years last past has been engaged in the business of manufacturing and selling chewing gum and food products throughout the States of the United States, the Territories thereof and the District of Columbia, in direct competition with other persons, copartnerships, and corporations similarly engaged.

PAR. 2. That in the conduct of its business respondent purchases the component parts of the chewing gum and food products in the various States of the United States, the Territories thereof, and in foreign countries, and has the same transported through said other States and Territories and foreign countries, in and to the town of Canajoharie, and other points in the State of New York, and there said respondent manufactures and puts up, and from there sells and ships to the purchasers thereof in the different States and Territories of the United States and the District of Columbia, and in foreign countries, the said chewing gum and food products, and there is continuously and has been at all times herein mentioned, a constant current of trade and commerce in said chewing gum and food products between and among the several States, Territories, and District of Columbia of the United States, and foreign countries.

PAR. 3. That the quantity of such products so manufactured, sold and distributed by respondent, has been and is substantial, and forms an important item of commerce among

the several States, Territories, and District of Columbia of the United States, and with foreign countries.

PAR. 4. That respondent customarily markets its products principally through jobbers and wholesalers in the grocery, drug, candy, and tobacco lines, who in turn resell to retailers in these lines, all of which wholesale and retail dealers are selected as desirable customers for the reason that they are known or believed to be (a) of good credit standing; (b) willing to resell at the resale prices suggested by respondent and who do resell at such prices, as hereinafter set forth; (c) willing to refuse to sell and who do refuse to sell to jobbers, wholesalers, and retailers who do not resell at the resale prices suggested by respondent, and who do not sell to such jobbers, wholesalers, and retailers as also hereinafter set forth; (d) good and satisfactory merchandisers in other respects. Such jobbers, wholesalers, and retailers are designated by the respondent as "selected" or "desirable" dealers. Respondent also sells "direct" in a few instances to certain large retailers who are selected on the same basis as the aforesaid jobbers, wholesalers, and retailers. The total number of such dealers handling the products of respondent includes the greater proportion of the jobbers, wholesalers, and retailers, respectively, in the grocery trade and a large proportion of the jobbers, wholesalers, and retailers in the drug, candy, and tobacco trades, respectively, throughout the United States.

PAR. 5. That respondent, in the sale and distribution of its products, has adopted and maintained, and still maintains, a policy known as the "Beech-Nut policy," and requests the cooperation therein of all dealers selling the products manufactured by it, dealing with each customer separately.

PAR. 6. That the purpose and intent of the respondent company in this merchandise policy is, among other things—

(a) To provide a profit for all of its so-called selected distributors which was and is the full profit arbitrarily fixed and established by the respondent according to its system of uniform resale prices, the maintenance of which the respondent requires and enforces upon all of its distributors, both wholesale and retail.

(b) To provide for all its distributors protection in securing such full profit on the products manufactured by respondent.

(c) To obtain the active support and cooperation of all its distributors, both wholesale and retail:

(1) In maintaining its said resale prices and pushing its price-maintained products.

(2) In preventing and eliminating all sales at lower prices than its fixed uniform resale prices.

(3) In preventing wholesale dealers and jobbers from selling its products to retail dealers who sell or have sold, at prices lower than the fixed uniform resale prices at which it requires retailers to resell.

PAR. 7. In order to carry out said beech-nut policy and to secure such cooperation, respondent—

(a) Issues circulars, price lists, and letters to the trade generally showing suggested uniform resale prices, both wholesale and retail, to be charged for beech-nut products.

(b) Requests and insists that the aforesaid selected jobbers, wholesalers, and retailers resell only at the suggested resale prices.

(c) Requests and insists that the aforesaid selected jobbers, wholesalers, and retailers sell only to such other jobbers, wholesalers, and retailers as have been and are willing to resell and do resell at the prices so suggested by the respondent; and requests and insists that such jobbers, wholesalers, and retailers discontinue selling to other jobbers, wholesalers, and retailers who fail to resell at the prices so suggested by respondent.

(d) Make it known broadcast to such selected jobbers, wholesalers, and retailers, whether sold "direct" or not, that if they, or any of them, fail to sell at the resale prices suggested by the respondent as aforesaid, respondent will absolutely refuse to sell further supplies of its products to them, or any of them, and will also absolutely refuse to sell any jobbers, wholesalers, and retailers whatsoever who sell to other jobbers, wholesalers, or retailers failing to resell at the prices suggested by respondent.

PAR. 8. That respondent, in the carrying out of said policy—

(a) Has within the time aforementioned refused and does refuse to sell its products to practically all such jobbers, wholesalers, and retailers as do not resell at the prices so suggested by the respondent;

(b) Has within the time aforementioned refused and does refuse to sell to practically all such jobbers, wholesalers, and retailers reselling to other jobbers, wholesalers, and retailers who have failed to resell at the prices so suggested by the respondent;

(c) Has within the time aforementioned refused and does refuse to sell to practically all so-called mail-order houses engaged in interstate commerce, on the ground that such mail-order houses frequently sell at cut prices, and has within the time aforementioned refused and does refuse to sell to practically all jobbers, wholesalers, and retailers who sell its products to such mail-order houses;

(d) Has within the time aforementioned refused and does refuse to sell to practically all so-called price cutters;

(e) Has maintained within the time aforementioned and does maintain a large force of so-called specialty salesmen or representatives who call upon the retail trade and solicit orders therefrom to be filled through jobbers and wholesalers, which orders are commonly known in the trade as "turnover orders"; that respondent's salesmen, under its instructions, have within the time aforementioned refused and do refuse to accept any such turnover orders to be filled through jobbers and wholesalers who themselves sell or have sold at less than the suggested resale prices or sell or have sold to jobbers, wholesalers, and retailers who sell or have sold at less than such suggested resale prices; and in such cases have requested such retailers to name other jobbers;

(f) Has within the time aforementioned reinstated and does reinstate as distributors of its products, jobbers, wholesalers, and retailers previously cut off or withdrawn from the list of selected jobbers, wholesalers, and retailers for failure to resell at the prices suggested by the respondent and/or for selling to distributors who do not maintain such suggested resale prices, upon the basis of declarations, assurances, statements, promises, and similar expressions, as the case may be, by said distributors, respectively, which satisfy the respond-

ent that such distributors will thereafter resell at the prices suggested by the respondent and/or will refuse to sell to distributors who do not maintain such suggested resale prices;

(g) Has within the time aforementioned added and does add to its list of new distributors, concerns reported by its representatives as declaring that they intend to and will resell at the prices suggested by the respondent, and/or will refuse to sell to distributors who do not maintain such suggested resale prices.

(h) Has within the time aforementioned utilized a system of key numbers or symbols stamped or marked upon the cases containing "Beech-Nut Brand" products, thus enabling the respondent, for any purpose whatsoever, to ascertain the identity of the distributors from whom such products were purchased; and that repeatedly, within the time aforementioned, when instances of price cutting have been reported to respondent by the selected wholesalers and retailers, or ascertained in other ways, its salesmen and representatives have been instructed by respondent to investigate, and that in pursuance of these instructions salesmen and representatives of respondent have by means of these key numbers or symbols traced the price cutters from whom the goods have been obtained and have thus ascertained the identity of such price cutters, and have also thus traced and ascertained the identity of distributors from whom price cutters have purchased "Beech-Nut Brand" products; and have thereafter refused to supply all such dealers with its products whether such dealers were themselves cutting the suggested resale prices or were selling to dealers cutting the suggested resale prices.

(i) Has within the time aforementioned maintained and does maintain card records containing the names of thousands of jobbing, wholesale, and retail distributors, including the aforesaid selected distributors, and in furtherance of its refusals to sell goods either to distributors selling at less than the suggested resale price, or to distributors selling to other distributors selling at less than the suggested resale prices, has listed upon those cards bearing the names of such distributors, the words "Undesirable—Price Cutters," "Do Not Sell," or "D. N. S." the abbreviation for "Do Not

Sell," or expressions of a like character, to indicate that the particular distributor was not, in the future, to be supplied with respondent's goods on account of failure to maintain the aforesaid suggested resale prices or on account of failure to discontinue selling to dealers failing to maintain such suggested resale prices. When respondent has received declarations, assurances, statements, promises, and similar expressions, as the case may be, by said distributors, respectively, which satisfy the respondent that such distributors will resell at the prices suggested by respondent, and/or discontinue selling to distributors failing to maintain the resale prices suggested by respondent, said respondent has issued instructions to "Clear the record," or directions of similar import, notation of which is made on the cards, and has thereafter permitted shipments of its products to be made to such distributors; and such distributors to whom shipments are thus allowed to go forward constitute the respondent's list of so-called "selected" jobbers, wholesalers, and retailers, and no distributor is thus listed on such card records as one to whom goods are allowed to go forward who fails to maintain the resale prices suggested by respondent or sells to distributors failing to resell at such suggested prices; and when a jobber, wholesaler, or retailer is reported as failing to maintain the suggested resale prices, and/or as selling to distributors who fail to maintain such suggested resale prices, and has been entered in the card records as one to whom shipments should not go forward, respondent notifies those jobbers, wholesalers, and retailers who supply said distributor of this fact, and also notifies its specialty salesmen, and gives similar notices to said jobbers, wholesalers, and retailers and to its specialty salesmen when reinstatements are made in its said list of "selected" jobbers, wholesalers, and retailers.

PAR. 9. That individual jobbers and wholesale dealers, as shown by their letters, have made statements to the effect that they will support respondent and cooperate with it in its selling policy and that they prefer to deal with respondent and will push its products on account of its refusal to supply goods to price cutters or to distributors supplying such price cutters; and that jobbers and wholesale dealers generally

prefer to handle and push respondent's goods on which there is a constant fixed margin of profit, rather than the goods of manufacturers competing with the respondent who do not suggest resale prices and/or maintain the same by any means whatsoever.

PAR. 10. That the distributors handling respondent's goods have repeatedly reported to respondent instances of price cutting in their respective localities and in many cases have reported specifically the names of such price cutters and requested respondent to discontinue selling to them or selling to distributors selling to them; and that respondent has approved and furthered such action on the part of distributors handling its products by repeatedly expressing its appreciation of such notification in its letters of reply to such distributors; and has aided and abetted its distributors in such reporting of price cutters by repeatedly requesting its distributors to supply the names of such price cutters; and that upon receiving such reports respondent has instructed its salesmen to investigate, and when such salesmen have confirmed the reported price cutting, has refused to supply the price cutter with further goods or to supply goods to distributors continuing to sell to such price cutters after notice to that effect.

PAR. 11. That respondent, in the distribution of its products sells "Beech-Nut Brand Pure Food Products" through wholesale and retail grocery dealers and its chewing gum and candy principally through wholesale and retail drug, candy, and tobacco dealers, and that the cost of wholesale and retail grocery, drug, candy, and tobacco dealers handling the products manufactured by the respondent, as estimated by respondent's vice president, together with gross and net profit margins allowed such dealers under the suggested resale prices of the respondent, are as set out in the following table:



*Table showing the range of costs of wholesale and retail dealers handling beechnut products in comparison with the gross and net profit margins of such wholesale and retail dealers under respondent's suggested prices.*

Class of dealer.	Range of costs of doing business on gross sales.	Profit.			
		Gross profit margins allowed under respondent's suggested resale prices.		Net profit margin allowed under respondent's suggested resale prices.	
		Excluding cash discount.	Including cash discount.	Excluding cash discount.	Including cash discount.
<b>Wholesale:</b>	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>
Grocery.....	5-9	<sup>1</sup> 10 and 14.5	<sup>1</sup> 12 and 16.5	1- 9.5	3-11.5
Drug.....	12-12.5	20	22	8- 8.5	10-10.5
Candy.....	10-15	20	22	4-10	6-12
Tobacco.....	5-9	20	22	11-15	12-17
<b>Retail:</b>					
Grocery.....	12-20	<sup>2</sup> 22-37	<sup>2</sup> 24-39	2-25	4-27
Drug.....	25-30	40	42	10-15	12-17
Candy.....	20-30	40	42	10-20	12-22
Tobacco.....	20-30	40	42	10-20	12-22

<sup>1</sup> Excluding cash discount, 10 per cent in less than carload lots and 14.5 per cent in carload lots; including cash discounts (2 per cent), 12 per cent in less than carload lots and 16.5 per cent in carload lots.

<sup>2</sup> Depending on product and quantity purchased.

PAR. 12. That these divergencies in the cost of doing business of both wholesalers and retailers are due respectively (a) to general differences in the character of the business of different types of wholesalers, i. e., grocery, drug, candy, and tobacco, on the one hand, and of different types of retailers, grocery, drug, candy, and tobacco on the other; and (b) to individual differences as among the wholesalers of each type, on the one hand, and as among retailers of each type, on the other; in location of establishment, rate of turnover, efficiency of management, selling expenses, including use or nonuse of credit, use or nonuse of delivery service, etc.; and in numerous other economic factors of a similar character.

PAR. 13. That respondent constantly urges that wholesale and retail distributors of its products shall take the full profit suggested by respondent and circulates both wholesale and retail price lists showing suggested resale prices and gross profit margins to the said distributors under said prices.

PAR. 14. That the aforesaid gross-profit margins are so adjusted as to induce a large number of jobbers and wholesalers and also of retailers, to handle respondent's products; and these margins are greater than are necessary to enable the relatively lower cost and more efficient jobbers and wholesalers and relatively lower cost and more efficient retailers, as set forth in paragraph 11, to resell and make a profit.

PAR. 15. That respondent, by its policy of maintaining resale prices and refusing to sell jobbers, wholesalers, and retailers failing to adhere to such prices, and refusing to sell to jobbers, wholesalers and retailers selling to other jobbers, wholesalers, and retailers failing to adhere to such prices, protects and has protected the relatively higher cost and less efficient jobbers and wholesalers and retailers against the competition of relatively lower cost and more efficient jobbers, wholesalers, and retailers, as shown in paragraph 11.

PAR. 16. That the effect of the said price-maintenance system enforced as aforesaid has been and is—

(1) To secure for the respondent, the Beech-Nut Packing Co., on the sales of the products manufactured by it, the trade of jobbers, wholesalers, and retailers and including especially the relatively higher cost and more inefficient jobbers and the relatively higher cost and more inefficient retailers as heretofore set out and to enlist their active support and cooperation in enlarging the sale of the price-maintained products manufactured by respondent to the prejudice of competing manufacturers who do not fix, require, or enforce the maintenance of resale prices upon their products.

(2) To eliminate competition in prices among jobbers, wholesalers, and retailers, respectively, handling the products manufactured by the respondent, thus preventing jobbers, wholesalers, and retailers, respectively, and especially the lower cost and more efficient establishments, from selling respondent's products at prices which they may deem adequate and which are warranted by their costs and selling efficiency as heretofore set out, whereby such portions of the public as require or prefer the products of the respondent are compelled to pay enhanced prices therefor.

(3) To tend to force manufacturers who do not fix, require, or enforce the maintenance of resale prices and who compete with respondent, also to inaugurate, maintain, and enforce a system of resale prices upon their products in order to offset the preference of jobbers, wholesalers, and retailers, respectively, for the price-maintained products of respondent, thus enabling such manufacturers as do not now maintain such resale prices to compete upon more equal terms with the respondent, and thereby tending to compel the public generally to pay enhanced prices for the products of such competing manufacturers also.

PAR. 17. That the merchandising conduct of respondent, heretofore defined and as herein involved, does not constitute a contract or contracts whereby resale prices are fixed, maintained, and enforced.

#### CONCLUSION.

That the methods of competition set forth in the foregoing findings are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the respondent, Beech-Nut Packing Co., has been and now is using unfair methods of competition in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding therein in respect to such alleged violation would be to the interest of the public, and fully stating its charges in that respect, and the respondent having duly entered its appearance by Charles Wesley Dunn, its attorney, and having filed its answer, and it having been thereafter duly stipulated between the parties that said

complaint should be deemed amended in certain respects and that respondent's said answer should stand as its answer to said complaint as so amended, and the attorneys for the above parties having signed and filed an agreed statement of facts wherein and whereby it was duly stipulated and agreed that said statement of facts should be taken by the Commission in lieu of testimony herein and that the Commission might proceed upon said statement of facts to enter its report and findings as to the facts, its conclusions of law, and its order disposing of this proceeding, and the Commission on the date hereof having made and filed its report containing its findings as to the facts and its conclusions that respondent has violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof. Now, therefore,

*It is ordered*, that respondent, Beech-Nut Packing Co., its officers, directors, agents, servants, and employees, cease and desist from directly or indirectly recommending, requiring, or by any means bringing about the resale of beech-nut products by distributors, whether at wholesale or retail, according to any system of prices fixed or established by respondent, and more particularly by any or all of the following means:

1. Refusing to sell to any such distributors because of their failure to adhere to any such system of resale prices;
2. Refusing to sell to any such distributors because of their having resold respondent's said products to other distributors who have failed to adhere to any such system of resale prices;
3. Securing or seeking to secure the cooperation of its distributors in maintaining or enforcing any such system of resale prices;
4. Carrying out or causing others to carry out a resale price-maintenance policy by any other means.

**FEDERAL TRADE COMMISSION v. RUUD MANUFACTURING CO. AND PITTSBURGH WATER HEATER CO.**

**COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.**

Docket No. 255.—June 30, 1919.

**SYLLABUS.**

Where two corporations, engaged in the manufacture and sale of water heaters, and having the exclusive right under certain patents to manufacture and sell such products, under the terms of an exclusive license agreement between them—

- (a) Sold their products under contracts, agreements, or understandings whereby the purchasers agreed to adhere to and maintain resale prices fixed and determined by the manufacturers; and
- (b) Refused to sell to dealers because they failed to adhere to such system of fixed prices:

*Held*, That a scheme of price maintenance, substantially as described, constituted an unfair method of competition in violation of section 5 of the act of September 26, 1914.

**COMPLAINT.**

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it, that the Ruud Manufacturing Co. and the Pittsburgh Water Heater Co., hereinafter referred to as respondents, have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief, as follows:

PARAGRAPH 1. That the respondent, the Ruud Manufacturing Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place of business located at the city of Pittsburgh in the State of Pennsylvania, and is now and was at all times hereinafter mentioned, engaged in the manufacture of instantaneous automatic gas

water heaters and other water heaters, and selling and distributing instantaneous automatic gas water heaters and other water heaters, throughout the States and Territories of the United States and in the District of Columbia in direct competition with other similarly engaged.

PAR. 2. That the respondent, Pittsburgh Water Heater Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place of business located at the city of Pittsburgh in the State of Pennsylvania, and is now and was at all times hereinafter mentioned, engaged in the manufacture of instantaneous automatic gas water heaters and other water heaters, and selling and distributing instantaneous automatic gas water heaters and other water heaters, throughout the States and Territories of the United States and in the District of Columbia in direct competition with others similarly engaged.

PAR. 3. Within two years last past the above-named respondents by agreement and understanding, with the intent, purpose, and effect of stifling and suppressing competition in the manufacture and sale of instantaneous automatic gas water heaters and other water heaters manufactured and sold by respondents in commerce as aforesaid, did establish and adopt the terms, conditions, and policies which obtained with respect to the resale by dealers of instantaneous automatic gas water heaters and other water heaters manufactured and sold by respondents, and did engage in, adopt, and maintain a system of fixing prices at which the instantaneous automatic gas water heaters and other water heaters of said respondents should be resold by dealers, with the effect of securing the trade of dealers and enlisting their active cooperation in enlarging the sale of respondents' price maintained, instantaneous automatic gas water heaters and other water heaters to the prejudice of competitors who do not fix and require the maintenance of resale prices of their water heaters, and with the effect of eliminating competition in price among dealers in respondents' instantaneous automatic gas water heaters and other water heaters and thereby depriving the dealers of their right to sell such instantaneous automatic gas water heaters and other water heaters at such prices as they may

deem adequate and warranted by their selling efficiency, and with other effects, and that for the purpose of maintaining standard resale prices and of inducing and compelling respondents' customers to maintain and keep such standard prices respondents have for more than two years last past refused and are still refusing to sell instantaneous automatic gas water heaters and other water heaters to customers or dealers who will not agree to maintain such specified standard resale prices or who do not resell such water heaters at the specified standard selling price so fixed and determined by respondents as aforesaid.

### REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission, having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondents, Ruud Manufacturing Co. and Pittsburgh Water Heater Co., and each of them, have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect to such alleged violations would be to the interest of the public, and fully stating its charges in that respect, and the respondent, Ruud Manufacturing Co., having entered its appearance by S. S. Robertson, its attorney, and the Pittsburgh Water Heater Co., having entered its appearance by Clark McKercher, its attorney, and both respondents having filed their joint answer admitting certain allegations of said complaint and denying certain others, and the attorneys for all the parties hereto having duly signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that such statement of facts should be taken by the Commission in lieu of testimony herein and that the Commission might forthwith proceed upon such agreed statement of facts to make and enter its report and findings as to the facts, its conclusions and its order disposing of this proceeding; the Commission having duly considered the report and being fully

advised in the premises, now makes its report and findings as to the facts and conclusions.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent, Rudd Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place of business in the city of Pittsburgh, in the State of Pennsylvania, and is now, and was at all times mentioned in the complaint herein, engaged in the manufacture of instantaneous automatic gas water heaters and other water heaters and the appurtenances thereof, and in selling and distributing such products throughout the States and Territories of the United States and the District of Columbia in direct competition with others similarly engaged.

PAR. 2. That the respondent, Pittsburgh Water Heater Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, having its principal office and place of business in the city of Pittsburgh, in the State of Pennsylvania, and is now and was at all times mentioned in the complaint herein engaged in the manufacture of instantaneous automatic gas water heaters and other water heaters and the appurtenances thereof, and in selling and distributing such products throughout the States and Territories of the United States and the District of Columbia in direct competition with others similarly engaged.

PAR. 3. That the quantity of such products so manufactured, sold, and distributed by said respondents is substantial, amounting to over 50 per cent of the automatic gas water heaters manufactured and sold in the United States, and forms an important item of commerce among the several States and Territories of the United States and the District of Columbia and with foreign countries.

PAR. 4. That the business of manufacturing and marketing automatic gas water heaters and the appurtenances thereof by both the said respondents has been for more than two years last past, and still is, governed and controlled in great part by the terms of an exclusive license agreement entered into by and between said respondents on or about



October 20, 1913, and by other supplementary agreements, under which each of said respondents was granted and now enjoys the exclusive right and privilege to manufacture, use, and sell certain important patented devices pertaining to gas water heaters and their appurtenances, under patents owned by the respective respondents. The validity and ownership of these patents and the rights of the respective companies under them have been settled by decrees of the Federal courts following extensive litigation between the respondent companies.

PAR. 5. That the general methods employed by both said respondents in merchandising and distributing their respective products which are manufactured under their patent license agreements are largely identical, and the various prices charged and discounts granted by both respondents are practically the same.

PAR. 6. That a very large proportion of the products of both respondents are sold directly to the trade, and in some instances to consumers, through branch offices, district managers, general agents, and other company representation. The trade to which these goods are thus sold by each of said respondents includes gas companies, gas-appliance dealers, hardware dealers, household supply stores, department stores, merchant plumbers, plumbing supply jobbers, and building operators.

PAR. 7. That in the balance of their trade, for the purpose of maintaining resale prices thereon, in certain communities where they have no company representatives, both of said respondents, and each of them by identical methods, have within two years last past made, and do now make, a practice of selling their respective products to certain dealers sometimes designated as agents or subagents to be resold to the trade or to consumers under agreements entered into between said respondents respectively and such individual dealers, whereby such dealers have been, and still are, required to agree, and do agree, with the respondent whose products they handle to resell, and such dealers have, pursuant to such agreements, usually resold said products within their territory at prices previously specified and fixed by said respondents, said prices being uniform as to the

respective products of both respondents on goods of similar types, grades, and capacities when sold to the class of customers mentioned in this paragraph; and such dealers prefer this arrangement to the exclusion of the trade of manufacturers who do not maintain said resale price policy and who compete with said respondents and on account of said arrangement said dealers do confine their trade to dealing with said respondents.

PAR. 8. That said resale prices have been, and are, fixed and specified from time to time by the respondents, pursuant to the provisions of said exclusive license agreements entered into between them as aforesaid.

PAR. 9. That said respondents sell their respective products to such dealers mentioned in paragraph 7 hereof outright at discounts, varying in the cases of different dealers from 25 per cent to 40 per cent from the list price at which such dealers are required to and do resell the same to their customers, with the result that the gross-profit margins of such dealers on such resales vary accordingly; and this variance is further augmented owing to the fact that the costs of doing business of said dealers show great divergences owing to differences in the character of their respective businesses, location of establishments, rate of turnover, efficiency of management, and selling expenses.

PAR. 10. That the agreements under which such resale prices are stipulated to be observed are usually made for one year only, and in case any dealer who has entered into such an agreement with either of the respondents fails or has failed during the term of such agreement to observe and maintain said resale prices, the respondents reserve the right to cancel such agreements and to refuse to renew the same.

PAR. 11. That the prices required to be charged by such dealers under the terms of said agreements have been, and are, the same as the current prices charged by both of the respondents for the same or similar goods when sold by them direct to the trade or to the consumer, as the case may be, through said respondent's branch offices, district managers, general agents, etc.

PAR. 12. That the tendency of the methods employed by said respondents in marketing and distributing their respec-

tive products as described in paragraph 7 hereof has been and is to eliminate competition in price in said products in the trade handling the same, and also to consumers, such as are described in paragraph 7 hereof.

#### CONCLUSIONS.

That the methods of competition set forth in the foregoing findings are, under the circumstances therein set forth, unfair methods of competition in interstate commerce in violation of the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondents, Ruud Manufacturing Co. and Pittsburgh Water Heater Co., and each of them, have been and now are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in respect to such alleged violations would be to the interest of the public, and fully stating its charges in that respect, and the respondent, Ruud Manufacturing Co. having entered its appearance by S. S. Robertson, its attorney, and the Pittsburgh Water Heater Co. having entered its appearance by Clark McKercher, its attorney, and both respondents having filed their joint answer admitting certain allegations of said complaint and denying certain others, and the attorneys for all the parties hereto having duly signed and filed an agreed statement of facts wherein and whereby it was stipulated and agreed that such statement of facts should be taken by the Commission in lieu of testimony herein and that the Commission might forthwith proceed upon such agreed statement of facts to make and enter its report and findings as to the facts, its conclusions, and its order disposing of this proceeding, and the

Commission on the date hereof having made and filed its report containing its findings as to the facts and its conclusions that respondent has violated section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof: Now, therefore,

*It is ordered* that respondents, Ruud Manufacturing Co. and Pittsburgh Water Heater Co., and each of them, and their respective officers, directors, agents, and employees cease and desist from directly or indirectly, jointly or severally, recommending, requiring, or by any means whatsoever, bringing about the resale of their products or of the products of either of them, by dealers whether at wholesale or retail, according to any system of prices fixed or established by respondents or either of them, and more particularly by any or all of the following means:

1. Entering into contracts, agreements, or understandings with such dealers to the effect that such dealers, or any of them, in reselling the products of said respondents, or either of them will adhere to any system of prices fixed or established by respondents, or either of them;

2. Securing from such dealers contracts, agreements, or understandings that they or any of them, will adhere to any such system of prices;

3. Refusing to sell to any such dealers because they fail to adhere to any such system of prices;

4. Securing or seeking to secure the cooperation of such dealers, or of any of them, in maintaining or enforcing any such system of resale prices;

5. Carrying out, either jointly or severally, or causing others to carry out a resale price maintenance policy by any other means.

## CASES IN WHICH ORDERS OF DISCONTINUANCE OR DISMISSAL HAVE BEEN ENTERED.

Docket orders. Nos.	Respondents.	Commodities.	Charges.	Answer, stipulation, or trial.	Reasons for discontinuance or dismissal.
1916. Aug. 19	1 Abraham Goldin, Tobias Goldin, and Samuel Goldin, copartners doing business as Goldin Bros.	Mercerized cotton thread.	Misbranding.....	Answer.....	Dismissed; practice discontinued; complete remedy obtained.
1917. Nov. 15	8 Victor Talking Machine Co....	Sound-reproducing machines.	Exclusive and tying contracts.	Answer and stipulation.	Discontinued; practice discontinued, no public interest in further proceedings.
1918. Jan. 19	13 C. L. Colman Lumber Co....	Lumber and other building materials.	Price discriminations.....	Answer.....	Dismissed; respondent acted in good faith to meet competition; no tendency to substantially lessen competition or tend to create a monopoly.
19 May 3	14 Interior Lumber Co.....	do.....	do.....	do.....	Do.
17	49 N. Z. Graves Corporation.....	Paints, varnish, and kindred products.	Bribery.....	do.....	Dismissed; respondent corporation dissolved and ceased to do business.
	98 J. H. Allen & Co.....	Coffee and tea.....	Giving premiums to be distributed by lot or chance.	Answer and stipulation.	Dismissed; respondent admitted the use of the unfair method of competitions.
June 13	57 Bridgeport Wood Finishing Co.....	Paints, stains and kindred products.	Bribery.....	Answer.....	Dismissed; respondent ceased to do business.
23	94 American Tobacco Co.....	Tobacco.....	Retail price fixing and maintenance.	do.....	Dismissed; proof not sufficient to sustain allegations of the complaint.
July 9	153 Twin City Varnish Co.....	Varnish and kindred products.	Bribery.....	do.....	Dismissed; complaint issued against wrong respondent.
18	101 The Climax Coffee & Baking Powder Co.....	Coffee and tea.....	Giving premiums to be distributed by lot or chance.	Answer.....	Dismissed; failure of proof.
18	103 J. B. Elliott Coffee Co.....	do.....	do.....	do.....	Dismissed; respondent not engaged in interstate commerce.
18	104 Enterprise Coffee Co.....	do.....	do.....	do.....	Do.
18	106 B. L. Gerhart & Co.....	do.....	do.....	do.....	Do.

Sept. 7	98	Atlantic Ice & Coal Corporation.	Coal and ice .....	Division of territory; threatening competitors; bogus prices; agreements not to compete; selling below cost; combination to fix prices.	.....do.....	Dismissed; proof not sufficient to sustain allegations of the complaint.
Oct. 11	142	Wilson & Co.....	Meats.....	Selling food unfit for human consumption.	Answer, trial, and stipulation.	Dismissed; failure of proof partly as to facts and partly as to wrongful intent of respondent.
1919 Feb. 24	32	United Drug Co.....	Drugs.....	Selling below cost.	Answer.....	Dismissed without prejudice; proof insufficient; lack of public interest.
28	230	North American Lined Products Co.	Oils, turpentine, and kindred products.	False and misleading advertising; adulteration of products; misbranding.	.....do.....	Dismissed without prejudice; respondent forfeited charter and ceased to do business.
Mar. 10	160	The Victor Electric Corporation.	X-Ray machines.....	False representations; suggestion to customers of certain tests of competitors' machines; acquisition of stock of competitor.	.....do.....	Dismissed without reasons assigned.
26	143	Morris & Co.....	Meats.....	Selling food unfit for human consumption.	Answer and trial.....	Dismissed without prejudice; charges sustained, but, it appearing that respondent substituted wholesome meat in lieu of that destroyed, and there being no likelihood of a recurrence of the practice due to the demobilization of the troops at the camps, the Commission is of the opinion that an order to cease and desist would not serve a useful purpose.
Apr. 2	247	American Chicle Co.....	Chewing gum.....	Suits not brought in good faith; refusal to sell to dealers who handled competitors' products.	Answer.....	Dismissed without prejudice; no reasons assigned.
9	165	The Esterbrook Steel Pen Manufacturing Co.	Pens.....	Resale price maintenance.....	.....do.....	Dismissed without prejudice; failure of proof.

## CONFERENCE RULINGS OF THE FEDERAL TRADE COMMISSION.

1. **Public interest—Competitive method discontinued.**—On application for the issuance of a complaint it appeared that a corporation engaged in the refining and sale of cane sugar, whose principal market is in the State in which its refinery is located, alleged that a larger corporation, having refineries located in other States and disposing of its product in interstate commerce in many States, refined and sold exclusively in the State of the applicant and in competition with it sacked sugar branded "pure cane fine granulated sugar." The applicant alleged that this sugar was not a standard fine granulated sugar, as the branding led consumers as well as many in the trade to believe, but was what is known as "off" sugar, in the manufacture of which an expensive part of the refining process necessary to extract the final residue of from 2 to 3 per cent of molasses was omitted; that this "off" sugar was sold to jobbers at about 10 cents per hundred pounds less than the market price for standard granulated sugar; and that by reason of the alleged false brand or label on the sacks retailers and consumers were deceived into the belief that they were buying granulated sugar equal to standard. As a result, the applicant stated it was compelled to meet the competition of this "off" sugar in the sale of its standard fine granulated sugar, in the manufacture of which it used the complete refining process, a part of which its competitor omitted in manufacturing the "off" sugar.

Upon consideration of the above allegations, the Commission, having instituted an investigation, and shortly thereafter the corporation complained of having issued a notice to the trade announcing that it had discontinued the sale of the "off" brand of sugar, and the applicant requesting to be permitted to withdraw its application, and the corporation complained of assuring the Commission that it had discontinued the sale of sugar branded in the manner complained of and had no intention of resuming the sale of the same: *Held*, That the method of competition complained of having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

2. **Public interest—Competitive method discontinued.**—On application for the issuance of a complaint, it appeared that a manufacturer engaged in interstate commerce issued a publication in which, under the guise of trade news, misinformation of a character unfair and detrimental to the applicant's business was circulated. Upon investigation by the Commission the applicant advised that the use of the alleged unfair method had been discontinued and the party complained of assured the Commission that its policy had changed with a change of management and no such practice would in the future be engaged in either against the applicant or any other competitor: *Held*, That the method of competition complained of having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

3. **Public interest—Competitive method discontinued.**—On application for the issuance of a complaint, it appeared that a typewriter rebuilding company engaged in interstate commerce had circulated among dealers in various States a letter falsely stating that a competitor's

factory in the Middle West had been removed to the East, and that for this reason many of its customers in Central and Western States would make new arrangements for obtaining typewriters. The party complained of subsequently advised the Commission that the statement when made was believed to be true. It also sent a letter of retraction to all dealers receiving the first communication, and assured the Commission of its readiness to take any further action deemed necessary. The applicant, being advised of these facts, suggested that no further action be taken: *Held*, That the method of competition complained of having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

4. **Public interest—Competitive method discontinued.**—On application for the issuance of a complaint, it appeared that a manufacturer engaged in interstate commerce sent out a printed circular containing an alleged letter to it by a dissatisfied customer of the applicant, disparaging the quality of applicant's product, which letter the applicant charged was fictitious. Upon investigation the Commission received assurances from the concern complained of that it had discontinued the publication of the circular in question, and that in future it would not in its advertising matter refer in any way to the products of its competitors: *Held*, That the method of competition complained of having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

5. **Public interest—Competitive method discontinued.**—On application for the issuance of a complaint, it appeared that an association of wagon peddlers, competing with a jobber, had, by threats of boycott, prevailed on a manufacturer engaged in interstate commerce to refuse to sell to such jobber. Shortly after an investigation was started the Commission was advised by the jobber that the manufacturer had resumed selling to it. Assurances were also given the Commission by the manufacturer that the jobber would not in future be denied the privilege of buying from it by reason of the threatened boycott: *Held*, That the matter having been satisfactorily adjusted as between the parties, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

6. **Exclusive territory—Refusal to sell.**—On application for the issuance of a complaint, it appeared that a manufacturer engaged in interstate commerce, having designated an exclusive dealer in a certain local territory, refused to sell to another dealer within this territory. It further appeared that such exclusive dealer was under no obligation to refrain from dealing in the products of other manufacturers of the same commodity: *Held*, That neither the Federal Trade Commission act nor the Clayton act prohibits manufacturers selling their product exclusively through one dealer in a given territory. A refusal to sell to others in such territory, under such circumstances, is, therefore, not unlawful.

7. **Manufacturers engaged in interstate commerce, irrespective of the size of their business, and all wholesalers so engaged, subject to Clayton act.**—On inquiry: *Held*, That all manufacturers engaged in interstate commerce, irrespective of the size of their business, and all jobbers or wholesalers thus engaged, are subject to the provisions of the Clayton act.

8. **The right of one manufacturer engaged in interstate commerce to buy out a competitor, and jurisdiction of the commission in such matters.**—On inquiry as to the right of one manufacturer to buy out a competitor in the same line of business: *Held*, That the only jurisdiction of the Commission in respect of such transactions is to enforce



the provisions of section 7 of the Clayton act prohibiting the acquisition by any corporation engaged in interstate commerce of the capital stock, in whole or in part, of another corporation thus engaged where the tendency of such acquisition may be to substantially lessen competition between such two corporations, or to restrain interstate commerce, or to create a monopoly; and also possibly to enforce section 5 of the Federal Trade Commission act, if such purchase either of property or of capital stock in connection with other circumstances might constitute an unfair method of competition: *Held, also*, That the mere purchase of the property of such competitor other than capital stock is not prohibited by the Clayton act or the Federal Trade Commission act.

As to the validity of such purchase of property or capital stock under the Sherman act, the Commission expresses no opinion.

9. **Exclusive agency.**—On inquiry by a piano manufacturer whether the following clause in a "consignment agreement" is in contravention of the Clayton Act, to wit:

*Item 3.* The factor shall offer, sell, or lease the pianos consigned to him by the consignor only to persons residing in the counties of \_\_\_\_\_ in the State of \_\_\_\_\_, and shall not sell nor lease, during the life of this contract, any other pianos than those consigned by the said (piano manufacturer):

*Held*, It appearing that the "consignment agreement" does not provide for a sale or lease of the goods of the principal to the person designated as "factor," but only for the establishment of an agency for the sale of the goods of the principal, therefore the use of such clause does not appear to be in violation of section 3 of the Clayton act.

10. **Direct selling.**—On application for the issuance of a complaint, it was alleged that certain mining operators were selling their product direct to consumers at wholesale prices and coercing retail dealers into handling their product, either by threats to sell or by temporary arrangements for selling their product direct to consumers. Upon investigation by the Commission, it appeared that the operators were in fact selling their product direct to consumers, but that this method of competition was not used for purposes of coercion, but was necessary in order to keep their product on the market: *Held*, That the sale by a mining operator of his product direct to the consumer is not of itself an unfair method of competition.

11. **Practice—Information respecting an alleged violation of law submitted by parties not directly interested.**—On inquiry: *Held*, That the fact that a party complaining to the Commission has no direct interest and acts without specific authority from the parties alleged to be injured will not prevent the Commission from taking action if the matter presented is one properly within its jurisdiction. It is the evident purpose of the law that action by the Commission should be taken regardless of the source of its information when it has reason to believe that there is a violation of a law which it is empowered to enforce, and that a proceeding by it in respect thereof would be to the interest to the public.

12. **Public interest—Violation of State statutes.**—On application for the issuance of a complaint it appeared that the commissioners of a certain county had appointed an employee of a bridge company to the position of county civil engineer, and that this situation made it possible for the company to secure information respecting the letting of bridge work which was not available to competing companies. It appeared that the State law prohibits such engineer from being interested, directly or indirectly, in any contract for the construction of bridges under his supervision: *Held*, That as the condition complained

of may be corrected by resort to a State statute a proceeding will not be instituted in the absence of important considerations of public interest.

**13. Exclusive territory.**—On inquiry by a manufacturer whether section 3 of the Clayton act is violated by a contract containing the following clause:

In consideration of exclusive sale of your goods in \_\_\_\_\_ from date of this contract to March 1st, 191—, \_\_\_\_\_ agree to neither sell your goods outside of the territory heretofore reserved to \_\_\_\_\_, directly or indirectly, under penalty of paying all damages resulting from a violation of this clause and cancellation of this contract at the option of the manufacturer; nor to countermand this order except on payment to \_\_\_\_\_ Manufacturing Co., as liquidated damages, 20 per cent of the net amount of goods hereby purchased:

*Held*, That section 3 of the Clayton act does not prohibit manufacturers selling their product exclusively through one dealer in a given territory and requiring the dealer not to sell their product outside of the territory assigned.

**14. Refusal to sell.**—On application for the issuance of a complaint, it appeared that certain manufacturers, pursuant to their established sales policy of selling only to local retail dealers, refused to sell to the applicant, a retail dealer doing business principally by mail, a certain commodity for shipment direct from the mills to consumers in a State where the applicant maintained no place of business. On investigation by the Commission it appeared that there was no agreement or understanding among the manufacturers complained of to prevent the applicant or others doing a similar business, by refusal to sell or otherwise, from securing this commodity, nor did it appear that such manufacturers had been coerced or intimidated by retailers affected by the competition of the applicant: *Held*, That under the circumstances a refusal of a manufacturer to sell to the applicant for direct shipment from the mill to territory covered by local dealers is not a violation of any law which the Commission is authorized to enforce. Whether a refusal to sell under other circumstances is contrary to the provisions of the Clayton act or the Federal Trade Commission act the Commission does not now decide.

**15. Exclusive agency—Exclusive territory—Refusal to sell.**—On application for the issuance of a complaint, it appeared that several manufacturers, having appointed exclusive agents or distributors in a given place, refused to sell to another dealer at the same point: *Held*, That neither the Clayton act nor the Federal Trade Commission act prohibits manufacturers establishing exclusive agencies or assigning exclusive territory to dealers. Under such circumstances a refusal to sell to others than such agents or distributors is not unlawful under these acts.

**16. Practice—Charge not sustained on investigation.**—On application for the issuance of a complaint, it was charged by a packer of canned clams that a competitor, in order to drive the applicant out of business, bid up the price of fresh clams to such an extent as to make the business unprofitable. The applicant, when requested, failed to submit further information, and an investigation by the Commission did not substantiate the charges made: *Held*, That the Commission, having no reason to believe that the party complained of has been or is using the alleged unfair method of competition, will not proceed further.

**17. Corporate name—Private rights—Public interest.**—On application by a corporation for the issuance of a complaint, it was alleged that one of its stockholders, whose name had been adopted by the appli-

cant as part of its corporate name, had formerly been a stockholder in a competing corporation and had then permitted the latter to use his name as part of its corporate name, but that after the withdrawal of said stockholder from the competing corporation it had, in violation of an alleged agreement between one of its officers and said stockholder, retained his name in its corporate name, to the injury of the applicant: *Held*, That as the application presents questions concerning purely private rights, in which the interest of the public is quite remote and indirect, it does not appear to the Commission that a proceeding in respect thereof would be to the interest of the public.

18. *Refusal to sell—Exclusive agency.*—On inquiry: *Held*, That the Clayton act does not prohibit manufacturers establishing exclusive sales agencies in certain territory and selling their product in such territory only through such agencies. A refusal to sell to others in such territory, where such agency has been established, is therefore not unlawful. Whether a mere refusal to sell under any circumstances is contrary to the provisions of the Clayton act or the Federal Trade Commission act the Commission does not now decide.

19. *Pipe lines—Jurisdiction.*—On application for the issuance of a complaint as to methods of a pipe line for the transportation of oil between the States: *Held*, That the Commission has no jurisdiction in the premises, and that the matter should be referred to the Interstate Commerce Commission.

20. *Exclusive territory—Refusal to sell.*—On application for the issuance of a complaint, it appeared that a manufacturer engaged in interstate commerce assigned exclusive territory to jobbers of his product in various States and refused to sell to the applicant, a competing jobber: *Held*, That the Federal Trade Commission act and the Clayton act do not prohibit manufacturers selling their product exclusively through one dealer in a given territory. A refusal to sell to others in such territory under such circumstances is therefore not unlawful. Whether a mere refusal to sell under any circumstances or for any reason is contrary to the provisions of the Clayton act or the Federal Trade Commission act the Commission does not now decide.

21. *Exclusive agency—Exclusive territory—Refusal to sell.*—On application for the issuance of a complaint, it appeared that a manufacturer, engaged in interstate commerce, having selected an exclusive agent or distributing dealer in certain territory, refused to sell to another dealer within this territory: *Held*, That neither the Federal Trade Commission act nor the Clayton act prohibits manufacturers establishing exclusive agencies or assigning exclusive territory to dealers. Under these circumstances a refusal to sell to others than such agents or distributors is therefore not unlawful under these acts.

22. *Railroads—Jurisdiction.*—On application for the issuance of a complaint as to abandonment by an interstate railway company of part of a branch line and its purpose to abandon more of it: *Held*, That the Commission has no jurisdiction of the subject matter of this complaint.

23. *Interstate commerce—Jurisdiction.*—On inquiry whether a local merchant in offering an automobile free to the customer drawing a specified number is practicing an unfair method of competition: *Held*, That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the act complained of is unlawful.

24. *Interstate commerce—Jurisdiction.*—On application for the issuance of a complaint, a retail dealer alleged that a competitor, engaged

in business in the same city, sold goods below the price at which the applicant could purchase them: *Held*, That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the practice complained of is unlawful.

25. *Interstate commerce—Jurisdiction.*—On application for the issuance of a complaint, it appeared that a retail dealer was selling a well-known make of underwear much below the customary price, to the injury of a jobber in the same city who sold these goods to the local retail trade: *Held*, That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the practice complained of is unlawful.

26. *Interstate commerce—Jurisdiction.*—On application for the issuance of a complaint, it appeared that two competitors of the applicant, located in the same city, sold lumber below cost. The sales of all parties at interest were confined wholly within one State: *Held*, That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the practice complained of is unlawful.

27. *Interstate commerce—Jurisdiction.*—On application for the issuance of a complaint, it was alleged by a retail dealer that other dealers in the community were using unfair methods in competition with him: *Held*, That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the methods complained of are unlawful.

28. *Banks—Jurisdiction.*—On inquiry respecting the refusal of banks to lend money on a particular kind of collateral: *Held*, That the facts do not present a case within the jurisdiction of the Commission, banks being expressly excepted from the provisions of section 5 of the Federal Trade Commission act.

29. *Practice where suggestion of violation of decree of Federal court is made.*—On application for the issuance of a complaint, it appeared that the practice complained of might be in violation of a decree against the party charged with these practices, which decree was entered in a Federal court: *Held*, That the matter should be, in this instance, referred by the Commission to the Department of Justice. Each matter of this kind will be disposed of upon its own facts.

30. *Jurisdiction—Deprivation of rights by municipal ordinance.*—On inquiry: *Held*, That the Commission has no jurisdiction to pass upon the claim of an electrical engineer that, by town ordinance, his right there to carry on his work is unduly abridged.

31. *Interstate commerce—Jurisdiction—Refusal to sell.*—On inquiry: *Held*, That where a jobber or manufacturer refuses to sell to a retailer in the same State, and no interference with interstate commerce appears to be involved, the Commission has no jurisdiction to act in the premises.

32. *Interstate commerce—Labor unions—Jurisdiction.*—On application for the issuance of a complaint respecting the enforcement of certain local labor-union rules: *Held*, That, as the labor union is not engaged in commerce, the Commission has no jurisdiction to determine whether or not the practice complained of is unlawful.

33. *Refusal to manufacture and sell—Competition—Jurisdiction.*—On application for the issuance of a complaint, it appeared that a company engaged in the manufacture of bottle crowns refused to make certain crowns for the applicant, assigning as the reason that the crowns ordered would constitute an infringement of the trademark of another customer, a competitor of the applicant. It did not appear that the refusal complained of was induced by the competitor:

*Held*, That, as the facts do not disclose a method of competition, the Commission is without jurisdiction to act in the premises.

**34. Interstate commerce—Jurisdiction.**—On application for the issuance of a complaint, it appeared that the proprietors of certain small coal mines refused to sell to a retail dealer in the immediate vicinity except through a competing dealer and, through the purchase of other near-by mines, cut off his supply of coal: *Held*, That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the practice complained of is unlawful.

**35. Interstate commerce—Jurisdiction.**—On application for the issuance of a complaint, it appeared that a retail dealer competing with the applicant, both doing business only within the State, discriminated in price between different localities in the sale of a commodity: *Held*, That, as interstate commerce is not involved, the Commission has no jurisdiction to determine whether or not the practice complained of is unlawful.

**36. Procedure—Combinations in restraint of trade.**—On application for the issuance of a complaint, suggesting unlawful combinations by companies engaged in interstate commerce in restraint of such commerce, no unfair method of competition being alleged: *Held*, That the matter thus involved should be referred to the Department of Justice.

**37. Clayton act—Section 3—Pending litigation.**—On application for the issuance of a complaint, alleging a violation of section 3 of the Clayton act, where it appeared that the party complained of is the defendant in a suit brought by the Department of Justice, involving the same questions of law and fact: *Held*, That a proceeding by the Commission at this time would not be to the interest of the public.

**38. Interstate commerce—Jurisdiction—Competition.**—On application for the issuance of a complaint, it appeared that a retail dealer, doing business wholly within one State, advertised the product of the applicant, a manufacturer engaged in interstate commerce, at less than the price at which the latter sold it at wholesale: *Held*, That, as in this instance, the method of competition complained of is used by a concern engaged solely in intrastate commerce, and only against local competitors not engaged in interstate commerce, the Commission has no jurisdiction.

**39. Manufacture and sale of repair parts—Unpatented articles.**—On application for the issuance of a complaint, it appeared that certain foundrymen made and sold repair parts for stoves manufactured by the applicant. It was not claimed that the stoves were patented or that the foundrymen led the public to believe that the parts were made by the applicant: *Held*, That under such circumstances the making and selling of repair parts for unpatented articles, by others than the original manufacturer, is not a violation of section 5 of the Federal Trade Commission act.

**40. Interstate commerce—Local boycott—Jurisdiction.**—On application for the issuance of a complaint, it appeared that certain advertisers in a local newspaper, and some of its subscribers, all apparently residing in the community where it was published, combined together and threatened to withdraw their patronage unless the management of the paper changed its policy: *Held*, That the facts alleged do not disclose the violation of any law which the Commission has jurisdiction to enforce.

**41. Price discrimination by absorption of freight charges—Alleged discrimination discontinued—Clayton act.**—Upon application by a corporation engaged in the manufacture on the Pacific coast of sanitary enameled ironware, for the issuance of a complaint for violation of section 2 of the Clayton act, it was alleged by the applicant that a competitor whose factories were located in the East was selling cer-

tain of its goods on the Pacific coast at a lower price than it was selling the same goods in other parts of the country, cost of transportation being considered, and that this discrimination in price was made for the purpose of, and would, if continued, have the effect of injuring or destroying the business of the applicant. Upon investigation by the Commission it appeared that, previous to the time the applicant entered into active competition with it, the corporation complained of sold its products in Pacific coast territory at its eastern prices and absorbed a portion of the freight charges, the balance of the freight charges being paid by the purchaser. After the applicant had established its business and entered into active competition with it the corporation complained of adopted the policy of selling certain staple articles, in which there was competition from the applicant, at a delivered price, absorbing all freight charges. The effect of such freight absorption by the corporation complained of was to make the price charged by it for these staple articles in the territory where the applicant competed with it substantially lower than the prices charged by it for the same articles in territories where the applicant did not compete with it. Before the completion of the investigation the corporation complained of notified the Commission that it had adopted a new price list for the Pacific coast. It further appeared that, after the application was made to the Commission and while the investigation was in progress, there had been a substantial reduction in railroad rates on shipments of enameled ironware to the Pacific coast. The new price list, considered together with this reduction in freight rates, brought the Pacific coast prices of the corporation complained of substantially to the level of the prices charged by it for the same articles in territory where the applicant did not compete with it, and, according to a statement filed with the Commission by the applicant, thereby removed his cause of complaint: *Held*, That while the Commission is authorized to issue a complaint where it shall have reason to believe that any person is violating or has violated any of the provisions of section 2 of the Clayton act, it does not consider it necessary or advisable in the present case to issue such complaint, since the discrimination complained of has been discontinued.

**42. Refusal to sell—Adjustment between parties—Pendency of suit by Government.**—On application for the issuance of a complaint, it appeared that a corporation engaged in interstate commerce in the manufacture and sale of sirups refused to sell its products to a wholesale grocer in another State because this grocer advertised and sold these products at prices lower than those made by other jobbers, which conduct was unsatisfactory to the manufacturing company. After the Commission had instituted an investigation, but before its completion, the complaining party notified the Commission that the matter had been amicably adjusted to its entire satisfaction, and that it desired that the application should be dismissed. It also appeared that there is pending a suit filed by the Government against the manufacturing corporation, brought under the Sherman Antitrust act: *Held*, That under all the circumstances, the matter having been thus satisfactorily adjusted as between the parties, and the Government having brought suit under the Sherman act, it does not appear to the Commission that a complaint should be issued.

**43. Price discrimination—Agency.**—On application of a jobber of iron pipe for the issuance of a complaint for violation of section 2 of the Clayton act, it was alleged that a manufacturer of such pipe discriminated in prices of such product in favor of a certain large jobber. Upon investigation of such charges, it appeared that such jobber sold the product of the manufacturer at prices fixed by the manufacturer under a contract of agency on a commission basis: *Held*,

methods of labeling and advertising used by it which may be unfair to competitors or may deceive the consuming public:

*Held*, That such practice of labeling, advertising, and selling in interstate commerce fabrics advertised and labeled as "St. Regis Silk," when in fact the fabrics complained of contain no genuine or cocoon silk, is an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act, in that such practice is calculated to deceive the consuming public, and thereby to injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics: *Held further*, That respondent having taken steps permanently to avoid all unfair competition in the matters complained of, and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

**51. Misbranding—Misleading labeling and advertising—Competitive method discontinued.**—On application for the issuance of a complaint, it was alleged that a manufacturer labeled certain fabrics as "Silk Armure" and "50-inch Silk Armure," which in fact were not genuine silk, and that such manufacturer advertised and sold said fabrics under such labeling in interstate commerce.

Upon investigation and after informal conference with the respondent it appeared that the fabrics labeled as "Silk Armure" in fact contained only 20 per cent genuine, or cocoon, silk and 80 per cent of other material; that the fabrics labeled "50-inch Silk Armure" contained only 22 per cent genuine, or cocoon, silk and 78 per cent of other material: and that such manufacturer advertised and sold each of said fabrics generally, in interstate commerce, under such respective labels; and

It appeared further that such practices in this industry have grown up gradually and partly through the necessity of meeting competitively like practices by others; and

It appeared further that respondent is ready and willing to co-operate with the Commission to end all such unfair methods in said industry and trade; and

It appeared further that respondent has now changed the labels of such fabrics from "Silk Armure" and "50-inch Silk Armure" to "Armure," and that respondent has also taken steps permanently to discontinue all other methods of labeling and advertising used by it which may be unfair to competitors or may deceive the consuming public:

*Held*, That such practice of labeling, advertising, and selling in interstate fabrics advertised and labeled as "Silk Armure" and "50-inch Silk Armure" without qualifying terms which clearly designate that class of fabrics composed partly of silk, when in fact the fabrics complained of are composed only in part of genuine, or cocoon, silk, is in each instance an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act, in that such practice is calculated to deceive the consuming public, and thereby to injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics: *Held further*, That respondent having taken steps permanently to avoid all unfair competition in the matters complained of and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

**52. Misbranding—Misleading labeling and advertising—Competitive method discontinued.**—On application for the issuance of a complaint,

sell, made solely for personal reasons, without the purpose or effect of restraining interstate commerce, is not a violation of any law which the Commission is authorized to enforce.

**49. Misbranding—Misleading labeling and advertising—Competitive method discontinued.**—On application for the issuance of a complaint, it was alleged that a manufacturer labeled certain fabrics as "Oxford and Cambridge Silks," which in fact were not genuine silk, and that such manufacturer advertised and sold said fabrics under such labeling in interstate commerce.

Upon investigation, and after informal conference with the respondent, it appeared that the goods labeled as "Oxford and Cambridge Silks" in fact contained only 15 per cent genuine, or cocoon, silk and 85 per cent of other material, and that such manufacturer advertised and sold said fabrics generally in interstate commerce under such label; and

It appeared further that such practices in this industry have grown up gradually and partly through the necessity of meeting competitively like practices by others; and

It appeared further that respondent is ready and willing to cooperate with the Commission to end all such unfair methods in said industry and trade; and

It appeared further that respondent has now changed its brand of such goods from "Oxford and Cambridge Silks" to "Oxford and Cambridge Drapery Fabrics," and that respondent has also taken steps permanently to discontinue all other methods of labeling and advertising used by it which may be unfair to competitors or may deceive the consuming public:

*Held*, That such practice of labeling, advertising, and selling in interstate commerce fabrics as "Oxford and Cambridge Silks" without qualifying terms which clearly designate that class of fabrics composed partly of silk, when in fact the fabrics complained of are composed only in part of genuine, or cocoon, silk, is an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act, in that such practice is calculated to deceive the consuming public and thereby injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics: *Held further*, That respondent, having taken steps permanently to avoid all unfair competition in the matters complained of and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

**50. Misbranding—Misleading labeling and advertising—Competitive method discontinued.**—On application for the issuance of a complaint, it was alleged that a manufacturer labeled certain fabrics as "St. Regis Silk," which in fact were not genuine silk, and that such manufacturer advertised and sold said fabrics under such labeling in interstate commerce.

Upon investigation, and after informal conference with the respondent, it appeared that the goods labeled as "St. Regis Silk" in fact contained no genuine or cocoon silk, and that such manufacturer advertised and sold said fabrics generally in interstate commerce under such label; and

It appeared further that respondent is ready and willing to cooperate with the Commission to end all such unfair methods in said industry and trade; and

It appeared further that respondent has now discontinued the manufacture of the goods formerly labeled "St. Regis Silk," and that respondent has also taken steps permanently to discontinue all other



all other methods of labeling and advertising used by it which may be unfair to competitors or may deceive the consuming public:

*Held*, That such practice of labeling, advertising, and selling in interstate commerce fabrics as "Toyama Silk" without qualifying terms which clearly designate that class of fabrics composed partly of silk, when in fact the fabrics complained of are composed only in part of genuine silk, is an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act, in that such practice is calculated to deceive the consuming public, and thereby to injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics: *Held further*, That, respondent having taken steps permanently to avoid all unfair competition in the matters complained of, and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

**54. Misbranding—Misleading labeling and advertising—Competitive method discontinued.**—On application for the issuance of a complaint, it was alleged that selling agents labeled certain fabrics as "Savoy Washable Art Silks," which in fact were not genuine silk, and that such selling agents advertised and sold said fabrics under such labeling in interstate commerce.

Upon investigation and after informal conference with the respondent, it appeared that the goods labeled as "Savoy Washable Art Silks" in fact contained only 29 per cent genuine, or cocoon, silk and 71 per cent of other material, and that such selling agents advertised and sold said fabrics generally in interstate commerce under such label; and

It appeared further that such practices in this industry have grown up gradually and partly through the necessity of meeting competitively like practices by others; and

It appeared further that respondents are ready and willing to co-operate with the Commission to end all such unfair methods in said industry and trade; and

It appeared further that respondents have now discontinued the use of said label, and that respondents have also taken steps permanently to discontinue all other methods of labeling and advertising used by them which may be unfair to competitors or may deceive the consuming public:

*Held*, That such practice of labeling, advertising, and selling in interstate commerce fabrics as "Savoy Washable Art Silks" without qualifying terms which clearly designate that class of fabrics composed partly of silk, when in fact the fabrics complained of are composed only in part of genuine, or cocoon, silk, is an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act in that such practice is calculated to deceive the consuming public and thereby to injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics: *Held further*, That respondents having taken steps permanently to avoid all unfair competition in the matters complained of and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

**55. Misbranding—Misleading labeling and advertising—Competitive method discontinued.**—On application for the issuance of a complaint, it was alleged that a manufacturer labeled certain fabrics as "Agra Silk," which in fact were not genuine silk, and that such manufac-

turer advertised and sold said fabrics under such labeling in interstate commerce.

Upon investigation, and after informal conference with the respondent, it appeared that the goods labeled as "Agra Silk" in fact contained only 15 per cent genuine, or cocoon, silk and 85 per cent of other material, and that such manufacturer advertised and sold said fabrics generally, in interstate commerce, under such label; and

It appeared further that such practices in this industry have grown up gradually and partly through the necessity of meeting competitively like practices by others; and

It appeared further that respondent is ready and willing to cooperate with the Commission to end all such unfair methods in said industry and trade; and

It appeared further that respondent has now changed its brand of such goods from "Agra Silk" to "Agra Cloth," and that respondent has also taken steps permanently to discontinue all other methods of labeling and advertising used by it which may be unfair to competitors or may deceive the consuming public: *Held*, That such practice of labeling, advertising, and selling in interstate commerce fabrics as "Agra Silk" without qualifying terms which clearly designate that class of fabrics composed partly of silk, when in fact the fabrics complained of are composed only in part of genuine, or cocoon, silk, is an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act in that such practice is calculated to deceive the consuming public and thereby to injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics: *Held further*, That respondent having taken steps permanently to avoid all unfair competition in the matters complained of and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

**56. Misbranding—Misleading labeling and advertising—Competitive method discontinued.**—On application for the issuance of a complaint, it was alleged that manufacturers labeled certain threads, no one of which contained any silk, respectively, as follows: "Sansilk," "Silkateen," "Silkateen" darning floss, "Silkine" crochet, and "Silkine" art thread, and that such manufacturers advertised and sold such threads under such labeling in interstate commerce.

Upon investigation it appeared that no one of the threads labeled as "Sansilk," "Silkateen," "Silkateen" darning floss, "Silkine" crochet, and "Silkine" art thread in fact contained any genuine or cocoon silk, and that such manufacturers advertised and sold said threads generally in interstate commerce under such labels; and

It appeared further that such practice of using fanciful words, of which the letters s-i-l-k constituted a part, may have grown up (as alleged by respondents) as a result of the necessity of meeting competitively like practices by others; and

It appeared further that whatever possible confusion and deception resulted were without any specific intent on the part of the respondents; and

It appeared further that respondents voluntarily took steps promptly to correct every possible confusion and deception that might result from such practice; and

It appeared further that respondents have now permanently changed each of the labels complained of by placing the fanciful words within quotations and by adding thereto certain words in conspicuous letterings, as follows: From "Sansilk" to "Sansilk" mercerized crochet cotton; from "Silkateen" to "Silkateen" mercerized crochet

all other methods of labeling and advertising used by it which may be unfair to competitors or may deceive the consuming public:

*Held*, That such practice of labeling, advertising, and selling in interstate commerce fabrics as "Toyama Silk" without qualifying terms which clearly designate that class of fabrics composed partly of silk, when in fact the fabrics complained of are composed only in part of genuine silk, is an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act, in that such practice is calculated to deceive the consuming public, and thereby to injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics: *Held further*, That, respondent having taken steps permanently to avoid all unfair competition in the matters complained of, and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

**54. Misbranding—Misleading labeling and advertising—Competitive method discontinued.**—On application for the issuance of a complaint, it was alleged that selling agents labeled certain fabrics as "Savoy Washable Art Silks," which in fact were not genuine silk, and that such selling agents advertised and sold said fabrics under such labeling in interstate commerce.

Upon investigation and after informal conference with the respondent, it appeared that the goods labeled as "Savoy Washable Art Silks" in fact contained only 29 per cent genuine, or cocoon, silk and 71 per cent of other material, and that such selling agents advertised and sold said fabrics generally in interstate commerce under such label; and

It appeared further that such practices in this industry have grown up gradually and partly through the necessity of meeting competitively like practices by others; and

It appeared further that respondents are ready and willing to co-operate with the Commission to end all such unfair methods in said industry and trade; and

It appeared further that respondents have now discontinued the use of said label, and that respondents have also taken steps permanently to discontinue all other methods of labeling and advertising used by them which may be unfair to competitors or may deceive the consuming public:

*Held*, That such practice of labeling, advertising, and selling in interstate commerce fabrics as "Savoy Washable Art Silks" without qualifying terms which clearly designate that class of fabrics composed partly of silk, when in fact the fabrics complained of are composed only in part of genuine, or cocoon, silk, is an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act in that such practice is calculated to deceive the consuming public and thereby to injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics: *Held further*, That respondents having taken steps permanently to avoid all unfair competition in the matters complained of and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

**55. Misbranding—Misleading labeling and advertising—Competitive method discontinued.**—On application for the issuance of a complaint, it was alleged that a manufacturer labeled certain fabrics as "Agra Silk," which in fact were not genuine silk, and that such manufac-

turer advertised and sold said fabrics under such labeling in interstate commerce.

Upon investigation, and after informal conference with the respondent, it appeared that the goods labeled as "Agra Silk" in fact contained only 15 per cent genuine, or cocoon, silk and 85 per cent of other material, and that such manufacturer advertised and sold said fabrics generally, in interstate commerce, under such label; and

It appeared further that such practices in this industry have grown up gradually and partly through the necessity of meeting competitively like practices by others; and

It appeared further that respondent is ready and willing to cooperate with the Commission to end all such unfair methods in said industry and trade; and

It appeared further that respondent has now changed its brand of such goods from "Agra Silk" to "Agra Cloth," and that respondent has also taken steps permanently to discontinue all other methods of labeling and advertising used by it which may be unfair to competitors or may deceive the consuming public: *Held*, That such practice of labeling, advertising, and selling in interstate commerce fabrics as "Agra Silk" without qualifying terms which clearly designate that class of fabrics composed partly of silk, when in fact the fabrics complained of are composed only in part of genuine, or cocoon, silk, is an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act in that such practice is calculated to deceive the consuming public and thereby to injure others who are engaged in selling a similar class of fabrics under labels and advertisements which correctly designate their product, and also to injure those engaged in selling genuine silk fabrics: *Held further*, That respondent having taken steps permanently to avoid all unfair competition in the matters complained of and to avoid all probable deception and injury to the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

**56. Misbranding—Misleading labeling and advertising—Competitive method discontinued.**—On application for the issuance of a complaint, it was alleged that manufacturers labeled certain threads, no one of which contained any silk, respectively, as follows: "Sansilk," "Silkateen," "Silkateen" darning floss, "Silkine" crochet, and "Silkine" art thread, and that such manufacturers advertised and sold such threads under such labeling in interstate commerce.

Upon investigation it appeared that no one of the threads labeled as "Sansilk," "Silkateen," "Silkateen" darning floss, "Silkine" crochet, and "Silkine" art thread in fact contained any genuine or cocoon silk, and that such manufacturers advertised and sold said threads generally in interstate commerce under such labels; and

It appeared further that such practice of using fanciful words, of which the letters s-i-l-k constituted a part, may have grown up (as alleged by respondents) as a result of the necessity of meeting competitively like practices by others; and

It appeared further that whatever possible confusion and deception resulted were without any specific intent on the part of the respondents; and

It appeared further that respondents voluntarily took steps promptly to correct every possible confusion and deception that might result from such practice; and

It appeared further that respondents have now permanently changed each of the labels complained of by placing the fanciful words within quotations and by adding thereto certain words in conspicuous letterings, as follows: From "Sansilk" to "Sansilk" mercerized crochet cotton; from "Silkateen" to "Silkateen" mercerized crochet

cotton; from "Silkateen" darning floss to "Silkateen" mercerized cotton darning floss; from "Silkine" crochet to "Silkine" crochet cotton; from "Silkine" art thread to "Silkine" art thread mercerized cotton:

*Held*, That such practice of labeling, advertising, and selling in interstate commerce threads labeled as: "Sansilk," "Silkateen," "Silkateen" darning floss, "Silkine" crochet, and "Silkine" art thread without the use of qualifying terms which clearly indicated that such threads were not composed of silk, when in fact they contained no silk, is, even in the absence of specific intent, an unfair method of competition within the meaning of section 5 of the Federal Trade Commission act: *Held further*, That respondents having promptly and voluntarily agreed and taken steps permanently to avoid all unfair competition in the matters complained of, and to avoid all further possible deception and injury to the trade and the consuming public, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

**57. Use of similar corporate name—Competitive method discontinued—Public interest.**—Upon application for the issuance of a complaint, it appeared that a corporation engaged in interstate commerce adopted in 1901 the corporate name "National Oil & Supply Company," and that another corporation engaged in interstate commerce adopted in 1916 the identical name. It further appeared that, while located in different cities, these corporations were selling the same class of goods in the same markets, and the use of the identical corporate name was resulting in confusion and deception of the public. The Commission took up the subject matter of the application with the corporation last adopting the name "National Oil and Supply Company," which voluntarily agreed to discontinue the use of the name and to adopt in lieu thereof the name "U. S. Oil and Supply Company": *Held*, (1) The use by a corporation of a corporate name consisting of a combination of several generic and descriptive words, in the identical form or combination previously adopted by a corporation engaged in the manufacture and sale of the same class of goods in the same market, is an unfair method of competition in that it is calculated to deceive the public and thereby result in injury to the competitor previously adopting the name. (2) The use of the name "U. S. Oil and Supply Company" does not constitute an unfair method of competition as against the *National Oil & Supply Company*. (3) The practice complained of having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

**58. Infringement of copyright law—Public interest.**—On application for the issuance of a complaint for a violation of section 5 of the Federal Trade Commission act, it appeared that the applicant had secured a copyright for an illustrated book containing photographs, drawings, and descriptions of his product, and that a competitor of the applicant had copied plans and photographs and used them in its own catalogue. It appears that Congress has provided a special Federal remedy for the redress of alleged infringements of copyrights (U. S. Rev. Stats., sec. 4966) whereby unusual advantages are given a complainant by being permitted to bring suit in a Federal court irrespective of citizenship of parties or the amount of damages sought: *Held*, That where the conditions complained of involve nothing more than a question of infringing copyrights, a proceeding will not be instituted in the absence of important considerations of public interest.

**59. Use of competitor's name—Public interest—Jurisdiction taken by courts.**—On application for the issuance of a complaint, it appeared that the applicant was a corporation engaged in the business of buying,

selling, repairing, and dealing in typewriters. The concern complained against, engaged in the same business, was charged with having adopted a firm name similar to that of the applicant, and by this and other means endeavoring to mislead the public and injure the applicant's business. The investigation revealed the fact that the applicant had begun a proceeding in the courts to restrain its competitor from continuing the acts complained of, and that a temporary restraining order had been issued in its favor: *Held*, That it does not appear to the Commission that a proceeding by it at this time in respect thereof would be to the interest of the public.

**60. Interstate commerce—Jurisdiction.**—On application for the issuance of a complaint, it was alleged that advertisements of attorneys practicing before the United States Patent Office at Washington are in many instances false or misleading, and that in other respects the methods of some of these attorneys are unfair and injurious to others in the profession: *Held*, That the practice of attorneys before the United States Patent Office is not commerce, either between the States or within the District of Columbia, and that therefore the Commission is without jurisdiction in the premises.

**61. Espionage—Use of secret processes—Litigation pending—Public interest.**—On application for the issuance of a complaint, it appeared that both the applicant and the party complained against were engaged in manufacturing by secret processes and formulae products which they shipped in interstate commerce. The investigation showed that the party complained against had employed a spy who spent over four months in the employment of the applicant, reporting to the party complained against each week. It was charged by the party complained against, on the other hand, that the applicant had enticed away its employees and thereby learned its secret processes and formulae. The applicant had filed a bill in the Federal courts praying for a writ of injunction to enjoin and restrain the practices complained of, and the party complained against had filed an answer thereto: *Held*, That it does not appear to the Commission that a proceeding by it at this time in respect thereof would be to the interest of the public.

**62. Fighting brand—Sales below cost—Charges not sustained.**—On application for the issuance of a complaint, it was alleged that a manufacturer and vendor of an article of interstate commerce had placed upon the market a "fighting brand" which was substantially the same as its trade-marked article; that the "fighting brand" was sold only in territory wherein competition existed and at a price below actual cost of production, and that the price of the standard trade-marked article was also reduced to a figure below actual cost. Upon investigation it appeared that the price at which the manufacturer complained against sold standard trade-marked and the alleged "fighting brand" of the article showed the manufacturer a substantial profit on both articles; furthermore, the charge of selling the alleged "fighting brand" only in competitive territory and for the purpose of embarrassing a competitor was not sustained, it appearing that the article was sold to supply a local demand which did not exist elsewhere: *Held*, That the transactions disclosed by the investigation in this case do not constitute an unfair method of competition within the purview of section 5 of the Federal Trade Commission act.

**63. Misbranding—Competitive method discontinued.**—On application for the issuance of a complaint by a manufacturer of men's clothing against another such manufacturer, it was alleged that clothing fabrics were offered to the public as "all wool" when, in fact, they contained large and varying amounts of cotton. Investigation and analysis of samples of the cloth sustained the allegation, and upon being advised of the facts the manufacturer complained against agreed permanently to discontinue the use or application of any brand,

label, description, statement, or other indication, direct or indirect, which might lead the public to believe the product to be all wool, except when it was in fact all wool: *Held*, That while misbranding of goods is an unfair method of competition within the purview of section 5 of the Federal Trade Commission act, yet the manufacturer complained against in this case, having agreed permanently to discontinue the acts complained of, and the public interest being safeguarded, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

64. *Refusal to sell because of bona fide credit considerations.*—On application for the issuance of a complaint, it was alleged by a wholesale merchant that he had been responsible for the introduction of a manufacturer's product in a certain territory and that for several years past he had purchased large quantities of said product, and that recently the manufacturer had refused to sell to him at prices allowed other merchants in applicant's territory. On investigation by the Commission, it appeared that the manufacturer had refused to sell to the applicant solely because of bona fide considerations of credit; *Held*, That a refusal by a manufacturer to sell to a wholesaler solely because of bona fide credit consideration is not an unfair method of competition within the purview of section 5 of the Federal Trade Commission act.

65. *Use of similar corporate name—Competitive method discontinued—Public interest.*—On application for the issuance of a complaint, it appeared that a corporation engaged in interstate commerce adopted in 1901 the corporate name "National A and B Company," and that another corporation engaged in interstate commerce adopted in 1916 the identical name. It further appeared that, while located in different cities, these corporations sold the same class of goods in the same markets, and the use of the identical corporate name resulted in confusing and deceiving the public. The Commission took up the subject matter of the application with the corporation last adopting the name "National A & B Company," which voluntarily agreed to discontinue the use of the name and adopted in lieu thereof the name "U. S. A & B Company"; *Held*, (1) That the use by a corporation of a corporate name, consisting of a combination of several generic and descriptive words, in the identical form or combination previously adopted by a corporation engaged in the manufacture and sale of the same class of goods in the same market, is an unfair method of competition in that it is calculated to deceive the public and thereby result in injury to the competitor previously adopting the name; (2) that the use of the name last adopted does not constitute an unfair method of competition as against the National A & B Company; (3) that the practice complained of having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

66. *Refusal to sell.*—On application for the issuance of a complaint, it was alleged that certain corporations engaged in the manufacture and sale of goods in interstate commerce refused to sell to the applicant for cash, certain commodities manufactured and sold by them, for the reason that such applicant had failed to pay for certain other commodities previously purchased, the undisputed accounts being long past due: *Held*, That a refusal to sell based upon the failure of the intending purchaser to pay past-due accounts for goods previously purchased is not a violation of any law which the Commission is authorized to enforce.

67. *Cooperative purchasing—Price discrimination—Exclusive dealing.*—On application for the issuance of a complaint, and after investigation by the Commission, it appeared that three purchasing agents, who for the most part placed their orders directly with manufac-

turers of mill supplies, represented a large number of cotton mills; that these agents were paid by the mills they represented according to the number of spindles operated, the compensation, however, being not less than a fixed amount per month; that these agents would represent any reputable mill on these terms; that supplies ordered by these agents were shipped by the manufacturers directly to the mills; and that the latter, and not the purchasing agents, were financially liable for such shipments. It further appeared that discounts were made by manufacturers on orders received through these purchasing agents; that these discounts were in most cases equal to jobbers' discounts and that they were allowed on account of the quantity purchased through such agents; that they were given when the orders were billed by the manufacturers; that they were given to the mills and not to the agents; and that to this extent these mills received better treatment than mills not represented by purchasing agents, although mills so represented were on an equal footing. It also appeared that the purchasing agents and manufacturers had made contracts providing for special discounts in consideration of exclusive dealing, but that these contracts were no longer in general use and were being abandoned, and there was no evidence that the remaining contracts of this character might substantially lessen competition or tend to create a monopoly. The Commission's investigation also failed to disclose evidence that the purchasing agents compelled manufacturers to quote prices which were not consistent with the cost of doing business or the cost of the goods: *Held*, (1) That the cooperation of textile mills, for the purpose of securing trade discounts, in the manner and to the extent disclosed in the record in this case does not constitute a violation of section 5 of the Federal Trade Commission act or section 2 of the Clayton act. Whether, under other circumstances, such as a consolidation of the purchasing agencies so that there would be but one outlet for manufacturers, or an arbitrary exclusion of competitors from the benefits of collective buying, there would be a violation of law, the Commission does not decide; (2) that since contracts for exclusive dealing are being discontinued, and since it does not appear that the effect of the unexpired exclusive contracts may be substantially to lessen competition or tend to create a monopoly, such contracts are not in violation of section 8 of the Clayton act.

68. Imitation of trade name—False advertising.—On application for the issuance of a complaint, a manufacturer of a cola drink, sold under the registered trade-mark "Coca Cola," alleged that the manufacturer of a similar drink sold under the trade name "Kel Kola" was using unfair methods of competition in that: (1) Its use of the name "Kel Kola" was per se unfair; and (2) it had published advertisements in various newspapers containing an alleged false statement that "On May 22 the Supreme Court of the United States decided that Coca Cola was adulterated and misbranded." On investigation of the first charge, it appeared that the word cola (or kola) as applied to beverages is descriptive of a class of beverages supposed to contain caffeine extracted from the seeds of the cola nut. Cola beverages have been known for years in foreign countries, and numerous cola drinks sold under trade names containing the word "cola" or "kola" singly or in combination with other words or arbitrary terms have been on the market in this country for many years, some of them being widely advertised and generally known to the consuming public in various portions of the country. The word cola (or kola) therefore is descriptive, is in common use, and is known to the public as identifying a class of goods and not the goods of any particular manufacturer. It can not be appropriated exclusively by any manufacturer. Aside from the word "kola," the trade name "Kel



Kola" bears no deceptive resemblance to the words "Coca Cola." On investigation of the second charge, it appeared that the party complained of had published the advertisements as alleged. It appeared further that the statement in such advertisement was deceptive and misleading. The manufacturer complained against agreed permanently to discontinue the use of such advertisements: *Held*, (1) That the use of the trade name "Kel Kola" of itself and in the absence of any evidence as to simulation in dress and other facts showing that the use of the name is calculated to deceive the public does not constitute an unfair method of competition as against the manufacturer of the beverage "Coca Cola." Whether or not the use of such trade name is an infringement of the registered trade-mark "Coca Cola" the Commission does not decide, Congress having provided a special Federal remedy for the redress of alleged infringement of registered trade-marks, and there being no important element of public interest involved in this case (see Conference Rulings 46 and 58); (2) that the use of the advertisement complained of is an unfair method of competition within the purview of section 5 of the Federal Trade Commission act; (3) That the company complained of having agreed permanently to discontinue the use of such statements in its advertisements, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

69. *Misrepresentation—Unfair practice discontinued.*—On application for the issuance of a complaint, it was alleged that a company engaged in the sale in interstate commerce of paints and glass was falsely representing to the trade through its traveling salesmen (1) that it had taken over the business of the applicant company, and (2) that the applicant had gone out of business. Upon investigation, it appeared that such representations had been made and that they were untrue. Upon being advised of the character of the complaint the responsible officers of the respondent company denied that representations of the character complained of had been made at their direction or with their knowledge and agreed that in future they would not themselves make any such statements nor permit their salesmen to do so. They immediately wrote their salesmen directing that no statements of the character complained of should be made in the future and also printed and distributed to the trade a circular designed to correct the false impression created by the statements of its representatives: *Held*, (1) That such practice of false representation is an unfair method of competition, and (2) that the company complained of having discontinued the practice and having taken steps to eradicate the false impression created by the representations complained of, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

70. *Interstate commerce—Jurisdiction.*—On application for issuance of a complaint it appeared that certain newspapers had refused to accept for publication advertisements tendered by applicant which related to a service to be performed by applicant for a small consideration, which service, it was claimed, would have the effect of enabling a purchaser of real estate to deal directly with the owner, thereby avoiding the payment of the usual agent's commission; that such refusal was induced by real estate dealers operating in the cities where the newspapers were published, who threatened to withdraw their advertising patronage from said newspapers unless the advertisements of the applicant were refused: *Held*, (1) That neither the applicant nor the real estate dealers (who, it is alleged, induced the newspapers to refuse to publish the advertisements of the applicant) are engaged in interstate commerce; and (2) that as the effect on the interstate commerce of the newspapers by the exclusion of the applicant's advertis-

ing would at most be indirect, remote, and secondary, the Commission is without jurisdiction in the premises.

**71. Discrimination—Discounts based on difference in cost of selling.**—On application for the issuance of a complaint, it appeared that a wholesale grocery company offered, in territory not reached by its own salesmen but traversed by salesmen of other wholesale grocers, to effect savings to retailers of "over 3% and perhaps 5% or 6%" on all orders for groceries sent in by mail. It was alleged that this offer was unfair to other wholesale grocers selling through salesmen in the territory in which said offer was made. On investigation by the Commission it appeared that the discounts given on the mail-order business exceeded only slightly, if at all, the saving to the concern making the offer by the elimination of the expense of maintaining a force of traveling salesmen: *Held*, That the discrimination in price, being one that makes only due allowance for difference in the cost of different methods of selling, is not in violation of section 2 of the Clayton act; and (2) that an offer to decrease the price of goods ordered through the mails by an amount equal to the difference in the cost of selling as compared with those purchased through traveling salesmen, is a discrimination based upon greater economy and efficiency in distributive methods and not an unfair method of competition within the purview of section 5 of the Federal Trade Commission act.

**72. Misbranding—Misleading label—Competitive method discontinued.**—On application for the issuance of a complaint, it was alleged that a merchant was selling in interstate commerce a certain fabric labeled "Army & Navy 8 oz. Standard Duck," and that the brand was misleading in that the fabric was a single filling duck, while both the Army and Navy standard ducks are twisted warp and twisted filling. Upon investigation it appeared that the fabric in question did not conform to either the Army or Navy standards for this class of goods. It appeared, further, that when the matter was called to the attention of the merchant and of the manufacturer who had made and branded the goods, the former did not own any of the goods so branded, and had instructed the manufacturer permanently to cease using the brand on goods made for him; and the latter did not have any of the goods on hand, and the manufacturer agreed with the Commission not to use the brand at any time in the future: *Held*, (1) That such practice of labeling and selling in interstate commerce goods labeled as "Army & Navy 8 oz. Standard Duck," when, in fact, such goods do not conform to the requirements of either the Army or Navy standards, is an unfair method of competition within the purview of section 5 of the Federal Trade Commission act; and (2) that the merchant and manufacturer, respectively, having taken steps permanently to discontinue all unfair methods of competition in the matters complained of, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

**73. False and misleading advertising—False and misleading statements regarding competitors—Competitive method discontinued.**—On application for the issuance of a complaint, it was alleged that a concern manufacturing a toilet preparation was engaged in unfair methods of competition in that it was (1) advertising in a false and misleading manner by (a) quoting excerpts from an alleged article of indorsement by a daily newspaper when, in fact, such article was a paid advertisement; (b) quoting, without date, excerpts from various publications indorsing the manufacturer's preparation, whereas, in fact, such publications no longer indorsed the product; and (2) making disparaging and misleading statements impugning the integrity of the applicant and other competitors.

On investigation it appeared that the manufacturer was engaged in the practices charged. The article of indorsement in question was

published as reading matter at the regular advertising rate prior to the passage of Thirty-seventh United States Statutes at Large, page 554, making such a publication unlawful unless marked "Advertisement." The newspaper did not at the time the application was made indorse the said preparation, but refused to accept the manufacturer's advertising. The manufacturer assured the Commission that it would in the future publish the date of the article in question whenever it or any excerpt therefrom was used and would accompany it with the statement, "There was paid for the publication of this article \$2,240."

The undated excerpts quoted from other publications were in the nature of gratuitous editorial comment made years previously, and their use gave the impression that such publications continued to indorse the manufacturer's preparation, when, in fact, they did not, and, on the contrary, such publications had endeavored to persuade the manufacturer to discontinue the use of such excerpts. The manufacturer assured the Commission that it would not hereafter use such excerpts without giving the dates of the original publication thereof.

It further appeared that the manufacturer issued various circulars and other advertising matter containing disparaging and misleading statements with reference to competitors. The manufacturer assured the Commission that it would in the future make no disparaging or misleading statements with reference to such competitors:

*Held*, (1) That the publication by a manufacturer as reading matter of commendatory articles with reference to his products, which articles are in fact paid advertisements, is an unfair method of competition within the purview of section 5 of the Federal Trade Commission act; (2) that the publication by a manufacturer of excerpts from commendatory articles by magazines in such a way as to lead the public to believe that such magazines continue to indorse the manufacturer's product, when, in fact, they do not, is an unfair method of competition within the purview of section 5 of the Federal Trade Commission act; (3) that the making of false or misleading statements imputing to competitors fraudulent or dishonest business methods is an unfair method of competition within the purview of section 5 of the Federal Trade Commission act; (4) that, the unfair competitive methods having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

**74. Design patent—Infringement—Validity—Jurisdiction.**—On application for the issuance of a complaint, it appeared that a company had secured a design patent, and almost immediately upon its issuance had advised parties manufacturing articles covered by the design that they must pay a royalty. The applicant alleged, and the facts strongly indicated, that the patent was void by reason of lack of novelty, and the applicant therefore sought relief from the Commission: *Held*, That in the absence of evidence that a patent has been unlawfully secured, the patentee has a right to advise those whom he conceives to be infringing it of his intention to protect his rights, provided such notice is given in good faith and not for the purpose of intimidating competitors or the customers of competitors; and (2) that in the absence of considerations of public interest the Commission will not institute proceedings to determine the validity of a patent where nothing more appears than that it may be void for lack of novelty.

**75. False and misleading advertising—Competitive method discontinued.**—On application for complaint, it was alleged that a manufacturer of pianos, engaged also in the retail trade, was publishing advertisements containing statements that it would sell player pianos manufactured by the applicant and widely known to the public at

"about half price," and at a saving of "from \$200 to \$400 on the established retail price," when, in fact, it was acquiring the applicant's pianos and installing therein inferior player mechanisms and selling this product as the applicant's player piano. On investigation it appeared that the concern complained against was engaging in the advertising complained of, and that it neither carried the applicant's player pianos in stock, nor had any intention of selling such player pianos at the prices advertised. It did not, however, appear that the concern was selling the applicant's pianos with the player actions of other makers installed as and for the applicant's player pianos, although it was installing its own player action, or that of other makers in pianos of the applicant's or other makes furnished by customers. The concern complained against assured the Commission that it would permanently discontinue the use of the advertisements in question: *Held*, (1) That the advertisement by a manufacturer, engaged also in retailing, of the player pianos of a competitor at greatly reduced prices, when, in fact, the advertiser has no such player pianos in stock and does not intend to furnish them to buyers at the prices advertised, where such advertisement is coupled with the intention, and followed by the effort, to sell, even with the knowledge of the buyer, player actions of entirely different makes in pianos of such competitor's make furnished by the purchaser, is an unfair method of competition, within the purview of section 5 of the Federal Trade Commission act; and (2) the unfair method of competition in question having been permanently discontinued, it does not appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public.

**APPENDIX I.**

**DECISIONS OF THE CIRCUIT COURTS OF APPEALS  
ON PETITIONS TO REVIEW THE ORDERS OF THE  
COMMISSION.**

**IN THE**

**UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT.**

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**SEARS, ROEBUCK & CO. v. FEDERAL TRADE  
COMMISSION.**

(Circuit Court of Appeals, Seventh Circuit. April 29, 1919. No. 2659.)

- 1. TRADE-MARKS AND TRADE-NAMES, Key-No. 80½, New, Vol. 8A Key-  
No. Series—UNFAIR COMPETITION.**

A finding by the Federal Trade Commission that a mail-order house doing an interstate business was guilty of unfair competition in selling sugars, teas, and coffees under representations that it had obtained special price concessions, because of the magnitude of its purchases, and that it purchased selected brands from abroad, *held* warranted.

- 2. TRADE-MARKS AND TRADE-NAMES, Key-No. 80½, New, Vol. 8A Key-  
No. Series—PROCEEDINGS BEFORE FEDERAL TRADE COMMISSION—INJUNCTIONAL ORDER.**

An order issued by the Federal Trade Commission, restraining a mail-order house doing an interstate business to cease and desist from certain unfair practices in connection with the sale of sugar and other staple commodities, *held* not to have been improvidently issued because the mail-order house had discontinued such methods, where it was contending that act September 26, 1914, § 5 (Comp. St. § 8836e), creating the Federal Trade Commission, was unconstitutional, or, if valid, had not been infringed, and the Government's control of sugar sales and consumption had temporarily put an end to the objectionable practices in any event.

- 3. EVIDENCE, Key-No. 23 (1)—JUDICIAL NOTICE—GOVERNMENT CON-  
TROL OF TRADE.**

On petition to have a cease and desist order issued by the Federal Trade Commission vacated on the ground that the unfair practices

of petitioner which related to sales of sugar, etc., had ceased, the court will take judicial notice of the Government's control of the sale and consumption of sugar during the war, which temporarily at least put an end to the objectionable practice.

**4. TRADE-MARKS AND TRADE-NAMES, Key-No. 80j, New, Vol. 8A Key-No. Series—UNFAIR COMPETITION—FEDERAL TRADE COMMISSION.**

Act September 28, 1914, § 5 (Comp. St. § 8836e), giving the Federal Trade Commission authority over unfair methods of competition, and declaring the same unlawful, is not void for indefiniteness because the words "unfair methods of competition" were not defined, the trader being entitled to his day in court, where common-law principles would control.

**5. CONSTITUTIONAL LAW, Key-No. 62, 80(2)—UNLAWFUL DELEGATION OF LEGISLATIVE AND JUDICIAL POWER.**

Act September 28, 1914, § 5 (Comp. St. § 8836e), giving the Federal Trade Commission power to stop unfair methods of competition in commerce and declaring the same unlawful, is not an unlawful delegation of legislative and judicial power; Congress having by the act declared the public policy applicable to the situation.

**6. TRADE-MARKS AND TRADE-NAMES, Key-No. 80j, New, Vol. 8A Key-No. Series—POWERS OF FEDERAL TRADE COMMISSION—UNFAIR COMPETITION.**

The Federal Trade Commission, under its authority to stop unfair methods of competition, can not prevent a trader from selling a staple article as sugar below cost, although it may prevent such sales accompanied by representations which would injure other traders.

(The syllabus is taken from 258 Fed. Rep. 307.)

Alschuler, circuit judge, dissenting in part.

Original petition to review order of Federal Trade Commission.

Original petition by Sears, Roebuck & Co. against the Federal Trade Commission, to review an order commanding petitioner to desist from certain unfair methods of competition in commerce. Commission directed to modify its orders, and petition in other respects denied.

Sidney Adler, of Chicago, Ill., for petitioner.

John Walsh, of Chicago, Ill., for respondent.

Before Baker and Alschuler, circuit judges, and Carpenter, district judge.

Baker, circuit judge, delivered the opinion of the court:

This is an original petition to review an order entered by the respondent, the Federal Trade Commission, against the

petitioner, Sears, Roebuck & Co., a corporation, commanding the petitioner to desist from certain unfair methods of competition in commerce. Respondent's order was based on its complaint, filed on February 26, 1918, on the petitioner's answer, and on a written stipulation of facts. Procedure before the Commission and also before this court on review is prescribed in section 5 of the act to create a Federal Trade Commission, approved on September 26, 1914. Respondent's authority over the subject matter of its order is derived from the following provision in the same section: "Unfair methods of competition in commerce are hereby declared unlawful." Section 4 is a dictionary of terms used in the act. "Commerce" means interstate or foreign commerce; but the general term, "unfair methods of competition," is nowhere defined specifically, nor is there a schedule of methods that shall be deemed unfair.

In its complaint respondent averred that petitioner is engaged in interstate and foreign commerce, conducting a "mail-order" business; that petitioner for more than two years last past has practiced unfair methods of competition in commerce by false and misleading advertisements and acts, designed to injure and discredit its competitors and to deceive the general public, in the following ways:

1. By advertising that petitioner, because of large purchases of sugar and quick disposal of stock, is able to sell sugar at a price lower than others offering sugar for sale;

2. By advertising that petitioner is selling its sugar at a price much lower than that of its competitors and thereby imputing to its competitors the purpose of charging more than a fair price for their sugar;

3. By selling certain of its merchandise at less than cost on the condition that the customer simultaneously purchase other merchandise at prices which give petitioner a profit on the transaction, without letting the customer know the facts;

4. By advertising that the quality of merchandise sold by its competitors is inferior to that of similar merchandise sold by petitioner, and that petitioner buys certain of its merchandise in markets not accessible to its competitors and is therefore able to give better advantages in quality and price than those offered by its competitors.

Petitioner extensively circulated the following advertisements, among others:

We can afford to give this guarantee of a "less than wholesale price" because we are among the largest distributors of sugar, wholesale or retail, in the world. We sell every year thirty-five million pounds of sugar. And, buying in such vast quantities, and buying directly from the refineries, we naturally get our sugar for less money than other dealers.

For instance, every grocer carries granulated sugar in stock, but does he tell you which kind? There are two kinds—granulated cane

sugar and granulated beet sugar—and they look exactly alike. Some people prefer the one and some the other. But beet sugar usually costs less than cane sugar, so if you are getting beet sugar you should pay less for it. Do you know which kind you are getting and which you are paying for?

Our teas have a pronounced, yet delicate, tea flavor with an appealing fragrance, because we spare neither time nor expense to get the very best the greatest tea gardens of the world can produce.

First, because of the difficulty of getting in this country the exact character and flavor of certain teas, we do our own importing and critically test every tea. Our representative goes to the various tea-growing countries and makes the selection in person. Then, the greatest care is taken to get only first-crop pickings from upland soil.

Also, by buying direct from the tea gardens, while the crops are being harvested, we are able to have them always perfectly fresh.

It would be natural for you to conclude that all this care in buying and selecting would make our teas very high in price, but in reality, our prices are unusually low for such high quality. Here is a reason: By buying direct from the tea gardens we cut out the middleman's profit.

Over land and sea, from the greatest coffee regions in the world we bring you the choicest of the crop, and make it possible for you to have that fresh, savory, and fragrantly tempting cup of coffee for your breakfast. You see, we buy direct from the best plantations in the world. We get the pick of the crop—upland coffees from rich, healthy soil and growers of unquestioned experience and skill. We buy enormous quantities and pay cash, thus making it possible to offer our customers the very best coffees at very low prices.

Petitioner's sales of sugar during the second half of 1915 amounted to \$780,000 on which it lost \$196,000. Petitioner used sugar as a "leader" ("You save 2 to 4 cents on every pound"), offering a limited amount at the losing price in connection with a required purchase of other commodities at prices high enough to afford petitioner a satisfactory profit on the transaction as a whole, without letting the customer know that the sugar was being sold on any other basis than that of the other commodities. Petitioner obtained its sugar in the open market from refiners and wholesalers. Competitors got their sugar from the same sources, of the same quality, and at the same price. Sugar is a staple in the market. Price concessions upon large purchases are unobtainable. From the facts respecting petitioner's methods of advertising and buying and selling sugar respondent found, and properly so, in our judgment, that petitioner intentionally injured and discredited its competitors by falsely leading the public to believe that the competitors were unfair dealers in sugar and the other commodities which petitioner was offering in connection with sugar.

Petitioner purchased 75 per cent of its teas from wholesalers and importers in the United States. The remainder it purchased through its representative Peterson in Japan; but there was no proof that Peterson made or was qualified to make "selections in person" or "first-crop pickings from



upland soil." All of petitioner's coffees were purchased from wholesalers and importers in the United States. Respondent found that petitioner's advertisements of teas and coffees were false and designed to deceive the public and injure competitors.

By the order, issued on June 24, 1918, petitioner was commanded to desist from—

(1) Circulating throughout the States and Territories of the United States and the District of Columbia, catalogues containing advertisements offering for sale sugar, wherein it is falsely represented to its customers or prospective customers of said defendant or to customers of competitors, or to the public generally or leads them to believe, that because of large purchasing power and quick-moving stock, defendant is able to sell sugar at a price lower than its competitors;

(2) Selling, or offering to sell, sugar below cost through catalogues circulated throughout the States and Territories of the United States and the District of Columbia among its customers, prospective customers, and customers of its competitors;

(3) Circulating throughout the various States and Territories of the United States and the District of Columbia, among customers, prospective customers, and customers of its competitors, catalogues containing advertisements representing that defendant's competitors do not deal justly, fairly and honestly with their customers;

(4) Circulating throughout the various States and Territories, of the United States and the District of Columbia, among customers, prospective customers, or customers of its competitors, catalogues containing advertisements offering for sale its teas, in which said advertisements it falsely stated that the defendant sends a special representative to Japan who personally goes into the tea gardens of said country and personally supervises the picking of such teas;

(5) Circulating through the various States and Territories of the United States and the District of Columbia, among customers, prospective customers, or customers of its competitors, catalogues containing advertisements offering for sale its coffees, in which it falsely stated that the defendant purchases all of its coffees direct from the best plantations in the world.

I. Petitioner insists that the injunctive order was improvidently issued because, before the complaint was filed and the hearing had, petitioner had discontinued the methods in question and, as stated in its answer, had no intention of resuming them. For example, no sugar offers of the character assailed were made after August, 1917. But respondent was required to find from all the evidence before it what was the real nature of petitioner's attitude. It was permissible for respondent to take judicial notice of the Government's wartime control of sugar sales and consumption. It was also proper to note that petitioner was contending (and still contends) that the act is void for indefiniteness, that the act is unconstitutional, and that the act, even if valid, under any proper construction has not been infringed by petitioner's practices. In *Goshen Mfg. Co. v. Myers Mfg. Co.* (242 U. S., 202), which was a suit for infringement of a patent, the defendant company averred

and introduced evidence to prove that six months before the bill was filed and with notice to complainant it had sold its factory, wound up its business, and had no intention of resuming. But throughout the intervening period and also in the answer to the bill the defendant company was attacking the validity of the patent and the right of the complainant to compel desistance. This conduct was held to be such a continuing menace as to justify the maintenance of the bill. So here, no assurance is in sight that petitioner, if it could shake respondent's hand from its shoulder, would not continue its former course.

II. Petitioner urges that the declaration of section 5 must be held void for indefiniteness unless the words "unfair methods of competition" be construed to embrace no more than acts which on September 26, 1914, when Congress spoke, were identifiable as acts of unfair trade then condemned by the common law as expressed in prior cases. But the phrase is no more indefinite than "due process of law." The general idea of that phrase as it appears in constitutions and statutes is quite well known; but we have never encountered what purported to be an all-embracing schedule or found a specific definition that would bar the continuing processes of judicial inclusion and exclusion based upon accumulating experience. If the expression "unfair methods of competition" is too uncertain for use, then under the same condemnation would fall the innumerable statutes which predicate rights and prohibitions upon "unsound mind," "undue influence," "unfaithfulness," "unfair use," "unfit for cultivation," "unreasonable rate," "unjust discrimination," and the like. This statute is remedial, and orders to desist are civil; but even in criminal law convictions are upheld on statutory prohibitions of "rebates or concessions" or of "schemes to defraud," without any schedule of acts or specific definition of forbidden conduct, thus leaving the courts free to condemn new and ingenious ways that were unknown when the statutes were enacted. Why? Because the general ideas of "dishonesty" and "fraud" are so well, widely and uniformly understood that the general term "rebates or concessions" and "schemes to defraud" are sufficiently accurate measures of conduct.

On the face of this statute the legislative intent is apparent. The Commissioners are not required to aver and prove that any competitor has been damaged or that any purchaser has been deceived. The Commissioners, representing the Government as *parens patriae*, are to exercise their common sense, as informed by their knowledge of the general idea of unfair trade at common law, and stop all those trade practices that have a capacity or a tendency to

injure competitors directly or through deception of purchasers, quite irrespective of whether the specific practices in question have yet been denounced in common-law cases. But the restraining order of the Commissioners is merely provisional. The trader is entitled to his day in court, and there the same principles and tests that have been applied under the common law or under statutes of the kinds heretofore recited are expected by Congress to control. This *prima facie* reading of legislative intent is confirmed by reference to committee reports and debates in Congress, wherein is disclosed a refusal to limit the Commission and the courts to a prescribed list of specific acts (Cong. Rec., 63d Cong., 2d sess., pp. 18, 18, 583, 12246). And this interpretation is not affected by the subsequent adoption of the Clayton Act, October 15, 1914, condemning certain specific acts.

III. But such a construction of section 5, according to petitioner's urge, brings about an unconstitutional delegation of legislative and judicial power to the Commission. Grants of similar authority to administrative officers and bodies have not been found repugnant to the Constitution. (*Buttfield v. Stranahan*, 192 U. S., 470; *Union Bridge Co. v. United States*, 204 U. S., 365; *Penn. Rld. Co. v. International Coal Co.*, 230 U. S., 184; *National Pole Co. v. Chicago & N. W. Ry. Co.*, 211 Fed., 65.)

With the increasing complexity of human activities many situations arise where governmental control can be secured only by the "board" or "commission" form of legislation. In such instances Congress declares the public policy, fixes the general principles that are to control, and charges an administrative body with the duty of ascertaining within particular fields from time to time the facts which bring into play the principles established by Congress. Though the action of the Commission in finding the facts and declaring them to be specific offenses of the character embraced within the general definition by Congress may be deemed to be quasi legislative, it is so only in the sense that it converts the actual legislation from a static into a dynamic condition. But the converter is not the electricity. And though the action of the Commission in ordering desistance may be counted quasi judicial on account of its form, with respect to power it is not judicial, because a judicial determination is only that which is embodied in a judgment or decree of a court and enforceable by execution or other writ of the court.

IV. In the second paragraph of the order petitioner is commanded to cease selling sugar below cost. We find in the statute no intent on the part of Congress, even if it has

the power, to restrain an owner of property from selling it at any price that is acceptable to him or from giving it away. But manifestly in making such a sale or gift the owner may put forward representations and commit acts which have a capacity or a tendency to injure or to discredit competitors and to deceive purchasers as to the real character of the transaction. That paragraph should therefore be modified by adding to it "by means of or in connection with the representations prohibited in the first paragraph of this order, or similar representation."

Sufficient appears in this record and in the presentation of the case to warrant us in expressing the belief that petitioner's business standards were at least as high as those generally prevailing in the commercial world at the time in question, and that the action of the Commission is to be taken rather as a general illustration of the better methods required for the future than a specific selection of petitioner for reproof on account of its conduct in the past.

Respondent is directed to modify its order as above stated; and in other respects the petition is

*Denied.*

By ALSCHULER, *Circuit Judge*.

In my judgment the order of the Commission should be further modified by striking out the third paragraph, which relates to alleged representation that petitioner's competitors do not deal fairly and honestly with their customers. In so far as the sugar, coffee, and tea advertisements ascribe petitioner's asserted lower prices and superior qualities to quantity purchases and special facilities and advantages for inspection, selection, and purchasing, they would tend to negative any imputation upon competitors of unfair dealing with their patrons. I believe the charge of imputing to competitors unfair dealing with their patrons rests wholly on petitioner's so-called "Caveat emptor" advertisement in its catalogue of March and April, 1916, wherein the public is cautioned in regard to white sugar, stating that some is cane and some beet sugar, alike in appearance, but the former usually higher in price; that petitioner plainly designates which of the two it offers, and the query is suggested, where else are goods so plainly described, and whether the customer gets elsewhere what he thinks he is buying. It seems to me that this does not amount to more than a statement or boast that petitioner, without being asked, describes the white sugars it proposes to sell, and the intimation is carried that competitors do not volunteer such description, but it is not suggested that they actually misrepresent the truth.

The facts before the Commission appear by stipulation, and those concerning this advertisement, aside from the advertisement itself, are as follows:

When Mr. A. M. Daly, the attorney in charge of the investigation in these proceedings was in Chicago, in March, 1916, he submitted to Mr. A. V. H. Mory, chief chemist of Sears, Roebuck & Co., and Mr. Joseph Scott, manager of the grocery department, a copy of the advertisement entitled "Caveat emptor" hereinbefore mentioned, and hereto attached, and requested them to state their views as to this particular advertisement and what it meant. They stated that this advertisement was for the purpose of calling attention to the distinction between beet sugar and cane sugar and laying stress upon the point of the facilities that Sears, Roebuck & Co. have for marking everything plainly so that the customer would know better from description the exact nature of what he was buying. After this explanation Mr. Daly went to his hotel. In a short time Mr. Mory called on him there and stated in substance that he had submitted the above-mentioned advertisement to Mr. A. H. Loeb, the vice president of Sears, Roebuck & Co., and that Mr. Loeb said that this course of advertising was unfair and unjust and declared that it must be discontinued, and further that it was against the policy of the house to send out such advertisements. Thereupon, on March 28, 1916, Mr. A. V. H. Mory, chief chemist, wrote to the Commission in part as follows: "The young man who wrote this was in to-day, and I pointed out to him wherein he had made a mistake and acted against house policy. He promised to use the soft pedal on all references to the dealer in the future. He tells me that this is an angle that had not occurred to him. He had not thought of the write-up in the light of a criticism of the dealer, so intent was he in pointing out that with our system of marking everything plainly and our facilities for knowing what we are selling, the customer would know better from our description the exact nature of what he was buying, in the case of those things difficult to judge, than if he had them placed before him, which of course is true."

But, assuming, as did petitioner's vice president, that this advertisement does carry the imputation that competitors deal unfairly with their customers, under the circumstances indicated by the quotation ought this advertisement to be the basis of a finding and order? The publication was in the catalogue for March and April, 1916. The complaint was filed nearly two years afterwards. The act authorizes the Commission to proceed when it shall have reason to believe that unfair methods of competition are or have been used, "and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public." In a monitory proceeding such as this seems to be, it could hardly be said that it would be "of interest to the public" to predicate action on a transgression for which due amends had long before been made, without remotest cause to believe there would be a repetition. To revive a stale advertisement of this nature which the advertiser immediately after the publication distinctly disavowed as having been unintentionally and inadvertently unfair to competitors, and ordered discontinued, without directly or

indirectly repeating or renewing it for so long an interval, far from subserving the public interest, might, in my judgment, have the contrary tendency of raising an imputation of oppressive or at least uncalled-for action, in predicating any proceeding or order on this advertisement.

Nor am I impressed with the authoritative relevancy here of decisions respecting injunctions. In a proceeding such as this, neither remedial nor punitive decisions of courts respecting injunctive relief in equity are not more analogous than are common law decisions defining unfair trade practices, arising out of controversies between individuals, as fixing thereby the limitation of the Commission's authority or scope.

The suggested modification would necessitate corresponding modification of the Commission's findings of facts, eliminating paragraphs numbered 4 and 5 thereof. Paragraphs 2, 6, and 7 (as well as pars. 4 and 5) of the findings state the circulation of the several advertisements to have been in each case for "more than two years last past," indicating thereby the two years next before the date of the findings, which is June 24, 1918. This is in contravention of the stipulated fact that none of the advertisements were more recent than August, 1917—some of them even antedating the passage, September 26, 1914, of the Trade Commission act itself. These findings should, in my judgment, be modified to comply with the stipulated fact.

IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND  
CIRCUIT.

FEDERAL TRADE COMMISSION v. GRATZ ET AL.

(Circuit Court of Appeals, Second Circuit. May 14, 1919. No. 236.)

TRADE-MARKS AND TRADE-NAMES, Key-No. 804 New, Vol. 8A Key-No.  
Series—UNFAIR COMPETITION—POWERS OF FEDERAL TRADE COM-  
MISSION.

Act September 26, 1914, § 5 (Comp. St. § 8836e), giving the Federal Trade Commission power to investigate unfair methods of competition, does not contemplate the prohibition of unfair methods of competition between individuals, there being no authority given to individuals to present grievances, hence where defendants, who engaged in selling ties and bagging for cotton bales, refused to sell to persons with whom they had had previous unsatisfactory relations, and refused to sell ties without bagging when there was fear that, owing to the scarcity of ties and the prospect of large crops, the marketing of the cotton crop might be endangered by

creating corners in ties, the Commission is not authorized to make any order compelling such sales. The unfair methods contemplated by the act are such as affect the public generally.

(The syllabus is taken from 258 Fed. Pep. 314.)

Petition to revise order of the Federal Trade Commission.

Petition of Warren, Jones & Gratz, by Anderson Gratz, for an order for the review of the findings and order of the Federal Trade Commission, and for an order setting the same aside, in a proceeding against Anderson Gratz and Benjamin Gratz, copartners doing business under the firm name and style of Warren, Jones & Gratz, and others. Order reversed.

T. F. Magner, of Brooklyn, N. Y., for petitioner.

John Walsh, of Washington, D. C., for respondent.

Before Ward, Hough, and Manton, circuit judges.

*WARD, Circuit Judge:*

This is a petition of Anderson Gratz, a member of the firm of Warren, Jones & Gratz, under section 5 of the act of September 26, 1814, 38 Stat. L. 730, creating the Federal Trade Commission, to review the following order of the Commission:

Therefore, it is ordered, that the respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and C. O. Elmer, their officers and agents, cease and desist from requiring purchasers of cotton ties to also buy or agree to buy a proportionate amount of American Manufacturing Co.'s bagging; and further that the respondents cease and desist from refusing to sell cotton ties unless the purchasers buy or agree to buy from them corresponding amounts of American Manufacturing Co.'s bagging, or any amount of cotton bagging of any kind.

By the Commission,

[SEAL.]

L. L. BRACKEN, *Secretary*.

If Anderson Gratz has not sufficient standing to file this petition, counsel for the Commission has very fairly waived the objection and invited the court to dispose of the questions raised.

The first count of the complaint served on the respondents, which is the only one involved, is as follows:

PARAGRAPH 1. That the respondents, Anderson Gratz and Benjamin Gratz, are copartners, doing business under the firm name and style of Warren, Jones & Gratz, having their principal office and place of business in the city of St. Louis, and State of Missouri, and are engaged in the business of selling, in interstate commerce, either directly to the trade, or through the respondents hereinafter named, steel ties made and used for binding bales of cotton, and which steel ties are manufactured by the Carnegie Steel Co. of Pittsburgh, Pa.,

and also selling, in the same manner, jute bagging, used to wrap bales of cotton, and which jute bagging is manufactured by the American Manufacturing Co., of St. Louis, Mo.

PAR. 2. That the respondents, P. P. Williams, W. H. Fitzhugh, and Alex. Fitzhugh, are copartners, doing business under the firm name and style of P. P. Williams & Co., having their principal office and place of business in the city of Vicksburg, and State of Mississippi, and the said last-named respondents and the said respondent Charles O. Elmer, who is located and doing business at the city of New Orleans, and State of Louisiana, are the selling and distributing agents of the said firm of Warren, Jones & Gratz, and sell and distribute the ties and bagging, manufactured as aforesaid, in interstate commerce, principally to jobbers and dealers, who resell the same to retailers, cotton ginner and farmers.

PAR. 3. That with the purpose, intent and effect of discouraging and stifling competition in interstate commerce in the sale of such bagging, all of the respondents do now refuse, and for more than a year last past have refused, to sell any of such ties unless the prospective purchaser thereof would also buy from them bagging to be used with the number of ties proposed to be bought; that is to say, for each six of such ties proposed to be bought from the respondents the prospective purchaser is required to buy six yards of such bagging.

The respondents filed an answer admitting the facts stated in paragraphs 1 and 2, but denying the facts stated and the conclusion of law contained in paragraph 3. They appeared and offered testimony before the Commission.

The Commission's material findings of fact and its conclusions of law are as follows:

PAR. 2. That within three years last past respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and C. O. Elmer, adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging. \* \* \*

PAR. 4. \* \* \* The dominating and controlling position occupied by said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy from them bagging manufactured by the American Manufacturing Co., and in many instances, said respondents refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging and such purchasers were oftentimes compelled to buy bagging manufactured by the American Manufacturing Co., from said respondents, in order to procure a sufficient supply of steel ties used for the purpose aforesaid.

#### CONCLUSIONS OF LAW.

That the methods of competition set forth in the foregoing findings as to the facts, in paragraphs 1, 2, 3, and 4, and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, against other manufacturers, dealers, and distributors of jute bagging, and against other dealers and distributors in the material known as sugar-bag cloth, and against manufacturers, dealers, and distributors of the bagging



known as re woven bagging and second-hand bagging, in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that there is not sufficient proof submitted in the hearings to sustain the paragraph in the complaint charging a violation of section 3 of an act of Congress known as the Clayton Act.

By agreement between the parties the Commission filed a transcript of the entire record in the proceeding before it. This court is given power by the act to affirm, modify, or set aside such an order, the Commission's findings of fact to be conclusive if supported by testimony.

There is testimony to support the findings of fact and therefore the question before us is whether they do support the Commission's conclusion of law that the method of competition forbidden is unfair within the meaning of section 5 of the act of September 26, 1914.

It seems to us that unfair methods of competition between individuals are not contemplated by the act. Congress could not have intended to submit to the determination of the Commission such questions as whether a person, partnership, or corporation had treated or bribed the employees of a competitor for the purpose of inducing them to betray their employer. We think the unfair methods, though not restricted to such as violate the antitrust acts, must be at least such as are unfair to the public generally. It seems to us that section 5 is intended to provide a method of preventing practices unfair to the general public and very particularly such as if not prevented will grow so large as to lessen competition and create monopolies in violation of the antitrust acts. Such a preliminary inquiry and determination constitutes a most important supplement in carrying out the public policy which those acts are intended to vindicate. This view is confirmed by the language of the section:

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint.

No authority is given to any individual to present his grievances and the Commission is to interpose only in the interest of the public.

That the Commission did not find sufficient proof to sustain the second count in the complaint, viz, that the method of the respondents found to be unfair violated section 3 of the act of October 15, 1914, known as the Clayton Act, which

makes unlawful any condition, agreement, or understanding that may lessen competition or tend to create a monopoly shows that the method found to be unfair must have been unfair in certain individual transactions. And we discover no evidence to support the finding in paragraph 2 that the respondents "adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging." It is the natural and prevailing custom in the trade to sell ties and bagging together, just as one witness testified it is to sell cups and saucers together. Such evidence as there is of a refusal to sell is a refusal to sell at all to certain persons with whom the respondents had previous unsatisfactory relations and a refusal to sell ties without bagging at the opening of the market in 1916 and 1917 when there was fear that owing to scarcity of ties and the prospect of large crops, the marketing of the cotton crop might be endangered by speculators creating a corner in ties. The evidence is that with these exceptions the respondents sold ties without any restrictions to all who wanted to buy and indeed made extraordinary efforts to induce the manufacturers of ties to increase their output so that all legitimate dealers and all cotton raisers should get enough ties and bagging at reasonable rates to market their cotton. It is only these exceptional and individual cases, which established no general practice affecting the public, that can sustain the findings in paragraph 4.

Counsel for the Commission calls our attention to the opinion of the Circuit Court of Appeals for the Seventh Circuit, not yet reported, *Sears, Roebuck & Co., petitioners, against Federal Trade Commission, respondent*. The practice there prohibited as unfair was extensive advertising containing false and misleading statements calculated to deceive all purchasers and to discredit all competitors. It was clearly a method unfair to the public generally.

As we think there is no evidence to support any general practice of the respondents to refuse to sell ties unless the purchaser bought at the same time the necessary amount of the American Manufacturing Co.'s bagging and that the Commission has no jurisdiction to determine the merits of specific individual grievances, the order is reversed.

## APPENDIX II.

### ACTS OF CONGRESS FROM WHICH THE COMMISSION DERIVES ITS POWERS, AND RULES OF PRACTICE BEFORE THE COMMISSION.

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#### ACTS OF CONGRESS FORM WHICH THE COMMISSION DERIVES ITS POWERS.

[Federal Trade Commission act, approved Sept. 26, 1914.]

[PUBLIC—No. 203—63d CONGRESS.]

[H. R. 15613.]

[Chap. 311, 38 Stat., 717.]

**An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes.**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed. The commissioner shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

The commission shall have an official seal, which shall be judicially noticed.

Sec. 2. That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Until otherwise provided by law, the commission may rent suitable offices for its use.

The auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

SEC. 3. That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, paper, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

"Corporation" means any company or association incorporated or unincorporated, which is organized to carry on business for profit and has shares of capital or capital stock, and any company or association, incorporated or unincorporated, without shares of capital or capital stock, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" means all documents, papers, and correspondence in existence at and after the passage of this Act.

"Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto.

"Antitrust acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; also the sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August twenty-seventh, eighteen hundred and ninety-four; and also the Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen.

Sec. 5. That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying,

or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the anti-trust acts.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

SEC. 6. That the commission shall also have power—

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce,

and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this Act.

(h) To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

**SEC. 8.** That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the commission as he may direct.

**SEC. 9.** That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedi-



ence to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Sec. 11. Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

[Clayton Act, approved Oct. 15, 1914.]

[PUBLIC—No. 212—63d Congress.]

[H. R. 15657.]

[Chap. 323, 38 Stat., 730.]

An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That "antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption, or

resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

SEC. 4. That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

SEC. 5. That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the antitrust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.

SEC. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such cor-

porations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

SEC. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company, organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000; and no private banker or person who is a director in any bank or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee

any private banker or any director or other officer or employee of any other bank, banking association or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares: *Provided further*, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act from being an officer or director or both an officer and director in one member bank.

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

SEC. 9. Every president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property or assets of such firm, association or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than \$500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

SEC. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securi-

ties, supplies or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind to the amount of more than \$50,000, in the aggregate, in any one year, with another corporation, firm, partnership or association when the said common carrier shall have upon its board of directors or as its president, manager or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of officer or director.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

If any common carrier shall violate this section it shall be fined not exceeding \$25,000; and every such director, agent, manager or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding \$5,000, or confined in jail not exceeding one year, or both, in the discretion of the court.

SEC. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testi-

mony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

Sec. 12. That any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

Sec. 13. That in any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: *Provided*, That in civil cases no writ of subpoena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

Sec. 14. That whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

Sec. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the



district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

SEC. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

SEC. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

Section two hundred and sixty-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

SEC. 18. That, except as otherwise provided in section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

SEC. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may be lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

SEC. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States of any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

SEC. 22. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,* That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his

person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of \$1,000, nor shall such imprisonment exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

Sec. 23. That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

Sec. 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

Sec. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

SEC. 26. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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[Webb Act, approved April 10, 1918.]

[PUBLIC—No. 126—65TH CONGRESS.]

[H. R. 2316.]

[Chap. 50, 40 Stat., 516.]

An Act To promote export trade, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the words "export trade" wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

That the word "association" wherever used in this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

SEC. 2. That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

SEC. 3. That nothing contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of

engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain or substantially lessen competition within the United States.

SEC. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September twenty-sixth, nineteen hundred and fourteen, shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

SEC. 5. That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and all of its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer

its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

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## RULES OF PRACTICE BEFORE THE COMMISSION.

[Adopted June 17, 1915. Amended Oct. 29, 1915, and Apr. 25, 1917.]

### I. SESSIONS.

The principal office of the Commission at Washington, D. C., is open each business day from 9 a. m. to 4.30 p. m. The Commission may meet and exercise all its powers at any other place, and may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

Sessions of the Commission for hearing contested proceedings will be held as ordered by the Commission.

Sessions of the Commission for the purpose of making orders and for the transaction of other business, unless otherwise ordered, will be held at the office of the Commission at Washington, D. C., on each business day at 10.30 a. m. Three members of the Commission shall constitute a quorum for the transaction of business.

All orders of the Commission shall be signed by the Secretary.

### II. COMPLAINTS.

Any person, partnership, corporation, or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

Such application shall be in writing, signed by or in behalf of the applicant, and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

The Commission shall investigate the matters complained of in such application, and if upon investigation the Commission shall have reason to believe that there is a violation of law over which the Commission has jurisdiction, the Commission shall issue and serve upon the party complained of a complaint stating its charges and containing a notice of a hearing upon a day and at a place therein fixed, at least 40 days after the service of said complaint.<sup>1</sup>

### III. ANSWERS.

Within 30 days from the service of the complaint, unless such time be extended by order of the Commission, the defendant shall file with the Commission an answer to the complaint. Such answer shall contain a short and simple statement of the facts which constitute the ground of defense. It shall specifically admit or deny or explain each

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<sup>1</sup> The third paragraph of Rule II originally read as follows: "The Commission shall investigate the matters complained of in such application, and if upon investigation it shall appear to the Commission that there is a violation of law over which the Commission has jurisdiction, the Commission shall issue and serve upon the party complained of a complaint stating its charges and containing a notice of a hearing upon a day and at a place therein fixed at least 40 days after the service of said complaint." It was amended to its present form on Oct. 29, 1915.

of the facts alleged in the complaint, unless the defendant is without knowledge, in which case he shall so state, such statement operating as a denial. Answers in typewriting must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper, 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide.

#### IV. SERVICE.

Complaints, orders, and other processes of the Commission may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer, or a director, of the corporation or association to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, corporation, or association; or (c) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association, at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

#### V. INTERVENTION.

Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested. The Commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

Applications to intervene must be on one side of the paper only, on paper not more than 8½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10½ inches long, with inside margins not less than 1 inch wide.

#### VI. CONTINUANCES AND EXTENSIONS OF TIME.

Continuances and extensions of time will be granted at the discretion of the Commission.

#### VII. WITNESSES AND SUBPŒNAS.

Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the Commission may permit their testimony to be taken by deposition.

Subpœnas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the Commission.

Subpœnas for the production of documentary evidence (unless directed to issue by a commissioner upon his own motion) will issue only upon application in writing, which must be verified and must specify, as near as may be, the documents desired and the facts to be proved by them.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United

States, and witnesses whose depositions are taken, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

#### VIII. TIME FOR TAKING TESTIMONY.<sup>1</sup>

Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than 5 nor more than 10 days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a commissioner, or an examiner.

#### IX. OBJECTIONS TO EVIDENCE.

Objections to the evidence before the Commission, a commissioner, or an examiner shall, in any proceeding, be in short form, stating the grounds of objections relied upon, and no transcript filed shall include argument or debate.

#### X. MOTIONS.

A motion in a proceeding by the Commission shall briefly state the nature of the order applied for, and all affidavits, records, and other papers upon which the same is founded, except such as have been previously filed or served in the same proceeding, shall be filed with such motion and plainly referred to therein.

#### XI. HEARINGS ON INVESTIGATIONS.

When a matter for investigation is referred to a single commissioner for examination or report, such commissioner may conduct or hold conferences or hearings thereon, either alone or with other commissioners who may sit with him, and reasonable notice of the time and place of such hearings shall be given to parties in interest and posted.

The general counsel or one of his assistants, or such other attorney as shall be designated by the Commission, shall attend and conduct such hearings, and such hearings may, in the discretion of the commissioner holding same, be public.

#### XII. DEPOSITIONS IN CONTESTED PROCEEDINGS.

The Commission may order testimony to be taken by deposition in a contested proceeding.

Depositions may be taken before any person designated by the Commission and having power to administer oaths.

Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such deposition should be taken, and stating the time when, the place where, and the name and post-office address of the person before whom it is desired the deposition be taken, the name and post-office address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the Commission will make and serve upon the parties, or their attorneys, an order wherein the Commission shall name the witness whose deposition is to be taken and specify the time when, the place where, and the person before

<sup>1</sup> Rules VIII, IX, X, and XI were not a part of the original rules. They were adopted on Apr. 25, 1917. The rules now numbered XII, XIII, XIV, and XV were originally numbered VIII, IX, X, and XI, respectively.



whom the witness is to testify, but such time and place, and the person before whom the deposition is to be taken, so specified in the Commission's order, may or may not be the same as those named in said application to the Commission.

The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. After the deposition has been so certified it shall, together with a copy thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the Commission at its office in Washington, D. C. Upon receipt of the deposition and copy the Commission shall file in the record in said proceeding such deposition and forward the copy to the defendant or the defendant's attorney.

Such depositions shall be typewritten on one side only of the paper, which shall be not more than 8½ inches wide and not more than 11 inches long and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1½ inches wide.

No deposition shall be taken except after at least 6 days' notice to the parties, and where the deposition is taken in a foreign country such notice shall be at least 15 days.

No deposition shall be taken either before the proceeding is at issue, or, unless under special circumstances and for good cause shown, within 10 days prior to the date of the hearing thereof assigned by the Commission, and where the deposition is taken in a foreign country it shall not be taken after 80 days prior to such date of hearing.

### XIII. DOCUMENTARY EVIDENCE.

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such document will not be filed, but a copy only of such relevant and material matter shall be filed.

### XIV. BRIEFS.

Unless otherwise ordered, briefs may be filed at the close of the testimony in each contested proceeding. The presiding Commissioner or examiner shall fix the time within which briefs shall be filed, and service thereof shall be made upon the adverse parties.

All briefs must be filed with the secretary and be accompanied by proof of service upon the adverse parties. Fifteen copies of each brief shall be furnished for the use of the Commission, unless otherwise ordered.

Application for extension of time in which to file any brief shall be by petition in writing, stating the facts upon which the application rests, which must be filed with the Commission at least 5 days before the time for filing the brief.

Every brief shall contain, in the order here stated—

(1) A concise abstract, or statement of the case.

(2) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with the reference to the pages of the record and the authorities relied upon in support of each point.

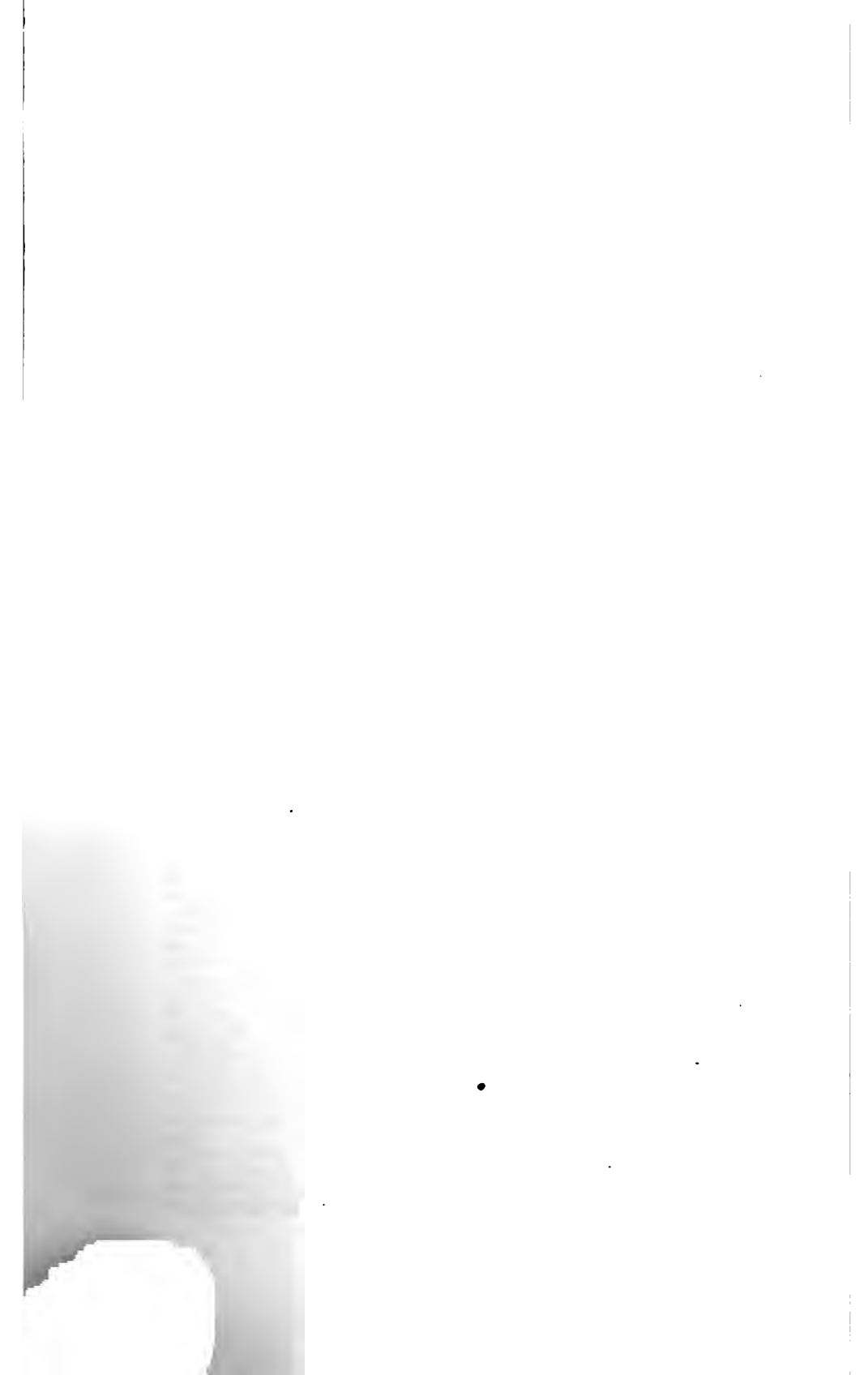
Every brief of more than 10 pages shall contain on its top fly leaves a subject index with page references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited.

Briefs must be printed in 10 or 12 point type on good unglazed paper 8 inches by 10½ inches, with inside margins not less than 1 inch wide, and with double-leaded text and single-leaded citations.

Oral arguments will be had only as ordered by the commission.

XV. ADDRESS OF THE COMMISSION.

All communications to the Commission must be addressed to Federal Trade Commission, Washington, D. C., unless otherwise specifically directed.



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